



Wednesday
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Part IV

**Federal Trade
Commission**

16 CFR Part 245
Request for Comments Concerning
Guides for the Watch Industry; Proposed
Rule

FEDERAL TRADE COMMISSION

16 CFR Part 245

Request for Comments Concerning Guides for the Watch Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on proposed revisions to the Guides for the Watch Industry ("the Watch Guides" or "the Guides"). The Commission also is soliciting comment about whether there is a continuing need for the Watch Guides. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning this proposal. This information will assist the Commission in determining whether the Guides should be revised and retained, or whether the Guides should be rescinded.

DATES: Written comments will be accepted until September 2, 1997.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H-159, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. Comments about these proposed changes to the Watch Guides should be identified as "Watch Guides—16 CFR Part 245—Comment."

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio or Laura J. DeMartino, Attorneys, Federal Trade Commission, Washington, D.C. 20580, (202) 326-2966 or (202) 326-3030.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Guides for the Watch Industry, 16 CFR Part 245, address claims made about watches, watchcases, watch accessories and watch bands that are permanently attached to watchcases. The Commission published a **Federal Register** Notice ("FRN") soliciting public comment on amendments to the Watch Guides, in response to a petition from the Jewelers Vigilance Committee, Inc. ("JVC").¹

While there was extensive comment in response to the FRN (263 comments were received), most comments focused on the Jewelry Guides rather than on the

Watch Guides.² Approximately ten comments focused primarily on the Watch Guides.³ The Commission has tentatively decided to make numerous changes that were not suggested in the JVC petition or mentioned in the FRN. Therefore, the Commission solicits further comment on the Watch Guides and the proposed changes.

The Commission also is soliciting comment about whether there is a continuing need for the Watch Guides. In particular, the Commission is requesting comment about the overall costs and benefits of the Guides. The Commission also is interested in determining whether international standards provide sufficient guidance to the watch industry. Further, the Commission is requesting comment regarding whether industry self-regulation and "market mechanisms," such as manufacturer reputation or manufacturer warranties, are sufficient to protect consumers from misrepresentations about watches. This information will assist the Commission in determining whether the Guides should be revised and retained, or whether the Guides should be rescinded.

II. Analysis of Comments

A. Revisions to the Legal Language of 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.⁴ Specifically, instead of stating "industry members should not misrepresent directly or indirectly * * *," the Guides have been revised to state "it is unfair or deceptive to * * *."⁵

²In 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.

³Benrus (22); Newhouse (76); AWI (116); USWC (118); JCWA (216); Citizen (228); Swiss Federation (232); AWA (236); Timex (239); and NAW (251). Other comments are also discussed below to the extent they address specific aspects of the Watch Guides or related issues.

⁴Statement on Deception, appendix to *Cliffdale Assoc., Inc.*, 103 F.T.C. 110, 1734-84 (1984) and Statement on Unfairness, appendix to *International Harvester Co.*, 104 F.T.C. 949, 1072 (1984).

⁵The FRN stated that, if the Commission determined to retain the Guides, the legal discussion would be updated to reflect the Commission's current practice. 57 FR 24999 and n.4.

B. Proposal to Consolidate the Jewelry, Watch Band, and Watch Guides and to Delete Permanently Attached Watchbands From the Provisions of the Watch Guides

At the time of the JVC petition, detachable metallic watch bands were the subject of the Watch Band Guides and metallic watch bands that were permanently attached to the watch were included in the Watch Guides. The JVC proposed combining the Watch and Watch Band Guides with the Jewelry Guides and the FRN solicited comment on this proposal. Thirty comments addressed this issue, and 22 believed the Guides should be consolidated.⁶ Most of those who gave reasons for favoring consolidation mentioned the Watch Band Guides rather than the Watch Guides. In a notice published on May 30, 1996, the Commission stated that it was rescinding the Watch Band Guides and consolidating certain of their provisions with the Guides for the Jewelry Industry (renamed Guides for the Jewelry, Precious metals and Pewter Industries). 61 FR 27222 (May 30, 1996).

The Commission also announced that it had determined *not* to combine the Guides for the Watch Industry with either of the other two guides. 61 FR 27181 (May 30, 1996). Six of the eight comments opposing consolidating all three Guides were from watch manufacturers or trade associations.⁷ (Only Benrus favored consolidation.) The reasons given for opposition were primarily related to the consolidation of the Watch Guides, not the Watch Band Guides. AWA stated that the current Guides reflect the fact that watches and jewelry are very different products "by imposing substantially different definitions and standards for watches and jewelry."⁸ For example, the minimum thickness in the Watch Guides for gold electroplated watches is about 100 times thicker than the

⁶JMC (1); Fasnacht (4); Gold Institute (13); Benrus (22); Estate (23); G&B (30); Jabel (47); Skalet (61); Lannyte (65); Newhouse (76); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bedford (210); Bridge (163); IJA (192); Canada (209); Matthey (213); Bedford (210); MJSA (226); and Leach (257).

⁷USWC (118); JCWA (216); NACSM (219); Best (225); Citizen (228); Swiss Federation (232); AWA (236); and Timex (239). Although AWI (116) p.1, did not specifically address this issue, it proposed certain changes in the Watch Guides and then noted that the remainder of the Watch Guides should be retained "as they now exist."

⁸Comment 236, p.1. See also Swiss Federation (232) pp. 1, 38 (stating that the industries are separate, with separate trade associations, and that consolidating the Guides would make dealer and consumer use of the Guides difficult); Citizen (228) p.5 (watches and jewelry are dissimilar and should not be combined); JCWA (216) p. 4 (favoring separate Guides because the application of materials and quality demands differ for watches and jewelry).

¹57 FR 24996 (June 12, 1992). The FRN also solicited comment on the JVC petition's proposed changes to the Guides for the Jewelry Industry ("Jewelry Guides"), 16 CFR Part 23, and the Guides for the Metallic Watch Band Industry ("Watch Band Guides"), 16 CFR Part 19. The Commission described the changes to the Jewelry Guides and the Watch Band Guides in a previously published FRN, 61 FR 27178-27228 (May 30, 1996).

minimum thickness for gold electroplated jewelry that was contained in the Jewelry Guides or for detachable watch bands in the Watch Band Guides.⁹ The differences in the provisions were based on the assumption that watches are worn more often than other plated jewelry and should, therefore, have thicker minimum plate standards.

Moreover, the Commission notes that watches are essentially machines that perform a function; many sections of the Watch Guides address the proper functioning of watches or protective features of watches. Those sections are irrelevant to jewelry or detachable watch bands. The Commission has thus determined to retain the Watch Guides as separate Guides.

C. Definitions: Section 245.1

The Watch Guides set forth definitions in section 245.1. The JVC proposed a change in the definition of "watchcase" or "case" that would result in deleting *permanently* attached watchbands from the items covered by the Watch Guides. Section 245.1(b) defines "watchcase" or "case" as "any metal case, covering, or housing * * * for a watch * * * including a watch band which has been permanently affixed thereto * * *." The JVC proposed including all watch bands, whether permanently attached or detachable, in the same category of its proposed guides.¹⁰

However, the Commission has tentatively determined not to delete permanently attached watch bands from the items covered by the Watch Guides. The two watch industry commenters that specifically addressed this issue supported retaining permanently attached watchbands under the Watch Guides.¹¹ The Commission agrees that whatever guidelines apply to watches plated with precious metals should also apply to permanently attached watchbands.¹²

The JVC also proposed adding "watch chains" to the examples of accessories

defined in section 245.1(c).¹³ No comments addressed this proposal. Section 245.1(c) defines "accessories" as "products, other than watch bands, which are affixed to and sold in combination with watchcases or watches, such as, for example, bracelets, pins, pendants, brooches, or ornaments." Currently, as noted, detachable watch bands are excluded from the Watch Guides; logically, all detachable accessories should be excluded. Accessories are *not* covered by 245.3, which governs misrepresentation of metallic composition; that section covers only "watchcases," which are defined as including permanently affixed watch bands. The only provision of the Watch Guides that specifically mentions accessories is 245.7, "Misrepresentation of Accessories," which prohibits misrepresentation of various types and refers the reader to the Jewelry Guides for details. The Commission proposes to delete the definition of "accessories" from the Guides and expand the definition of "watchcase" or "case" to include any *permanently attached* accessory, so that only permanently attached accessories are included in the Watch Guides. Therefore, such accessories would be covered by section 245.3 (*i.e.*, Misrepresentation of Metallic Composition).¹⁴

The JVC also proposed adding the explanation "at all levels of consumption" to the end of the definition of "industry member" as "a person, firm, corporation, or organization engaged in the importation, manufacture, sale or distribution of any industry product," in section 245.1(h) of the current Guides. The current definition states that it applies to entities engaged in the "importation, manufacture, sale, or *distribution* of any industry product." (Emphasis added). Thus, a distributor who sells watches to a retailer is covered by the admonitions of the Guides.

However, one comment stated 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.¹⁵ 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. Thus, the Commission proposes adding a new section to the Guides, "245.0 Scope, application, and purpose," which states that the 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, distributing or importing industry products." This section also provides that the Watch Guides cover representations asserted by any means, including computerized images.

Some of the commenters proposed other changes to section 245.1. The Swiss Federation proposed adding certain definitions (for "movement," "mechanical movement," and "quartz movement") because "today's development of more complex watches and watch components require more precise identification of these terms."¹⁶ The JVC also proposed that the Watch Guides prohibit deceptive use of the term "quartz watch," and included a proposed definition of quartz watch.¹⁷

Although quartz watches are not addressed by the current Guides, they constitute the bulk of watches sold today. The Commission proposes adding a definition of quartz watches, and addressing, in section 245.6, misrepresentations specifically related to quartz watches, as the JVC suggested. The Commission also proposes including in section 245.1 the following simplified version of the technical definitions of movement proposed by the Swiss Federation:

The term "movement" means that part of a watch which produces and maintains a recurring phenomenon and is capable of counting time. The movement is connected to a means of displaying time by either a dial and hands (analog) or a digital display, and is mounted in a case.

(1) "Mechanical movement" means a movement which divides time into equal parts using a balance wheel or any other mechanical means of determining intervals of time that uses power generated by a mainspring which may be wound by hand or automatically.

(2) "Quartz movement" means a movement which divides time into equal parts using a synthetic quartz crystal that vibrates using power generated by electrical energy.

The Swiss Federation also proposed adding a definition of chronometer contained in Standard 3159 (Timekeeping instruments—Wrist-

⁹ Standards for plated watch bands that are permanently attached to watches are the same as for watches.

¹⁰ See JVC Petition, § 23.25(c) "Note."

¹¹ Swiss Federation (232) pp.27, 38-39 (stating that a watch, case, and permanently attached band are sold as one unit whereas detachable bands primarily are sold separately in an aftermarket); Timex (239) p.8 (stating that compliance may be more burdensome if a permanently attached band is treated as a detachable band and therefore must bear separate country of origin and metallic content markings, regardless of whether it differed from the markings on the case).

¹² Detachable bands are in essence bracelets that can be replaced if the precious metal plating wears thin.

¹³ JVC Petition, § 23.25, Section I (b).

¹⁴ The Watch Guides also cover accessories as "industry products," defined in § 245.1(g), and addressed in other sections of the Guides. However, these sections are either inapplicable to accessories or are very general in nature.

¹⁵ ISA (237) p.12.

¹⁶ Comment 232, p.28.

¹⁷ See JVC Petition § 23.29 and discussion of section 245.6, "Deception as to Movements," *infra*.

chronometers with spring balance oscillator) established by the International Organization for Standardization (ISO). This definition states that a watch is not a "chronometer" unless "certified by a neutral, official authority, which checks the watch, or if necessary the movement, and issues an official certificate of compliance."¹⁸

The Swiss Federation contended that the Trade Agreements Act of 1979 supports adopting ISO standards. The Act states that "No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States * * *," and 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 (1980). The Commission agrees that, in developing standards within the meaning of the Trade Agreements Act, it should consider whether international standards exist and are appropriate for use in the United States.¹⁹

Although the Guides do not define chronometer, section 245.4 cautions industry members not to falsely designate or describe a watch as a chronometer. However, the definition in the ISO standard would require industry members to test and obtain a certificate before describing a watch that keeps time with precision as a chronometer. No evidence has been brought to the Commission's attention indicating that consumers believe use of the word "chronometer" alone, without any reference to testing and certification, means that the device has been tested and certified.²⁰ In the absence of such evidence, the Commission does not intend to adopt the definition of chronometer contained in ISO Standard 3159.

However, the Commission is aware that companies marketing chronometers in the United States that have been tested and certified in accordance with

¹⁸ Comment 232, p.29 and exhibit 10 thereto. ISO is, according to the "foreword" sections in several ISO standards attached to the Swiss Federation's comment (232), "a worldwide federation of national standards bodies. The work of preparing International Standards is normally carried out through ISO technical committees."

¹⁹ Certain provisions of the Watch Guides qualify as standards under the Trade Agreements Act, which defines a standard 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) (Supp. 1995).

²⁰ The dictionary definition of "chronometer" is "an exceptionally precise clock, watch, or other timepiece."

the ISO standard may want assurance that the level of precision required to meet the ISO standard is also sufficient within the meaning section 245.4 of the Guides. Therefore, the Commission proposes to include a Note to section 245.4 stating that conformity to the ISO definition constitutes a "safe harbor" for a claim that a watch is a chronometer. The Commission seeks comment on this modification.

Timex proposed limiting the definition of "watch" to a device "with the primary function of timekeeping for measuring or indicating time which is worn on or about the person."²¹ It noted that wrist instruments may serve a variety of purposes other than timekeeping, such as wrist paging devices that also keep time, and concluded that such technical advances make it "appropriate" to limit the definition of "watch."²² However, it is not evident why the Watch Guides would be less needed with respect to devices that perform a watch's function (*i.e.*, timekeeping), but in a secondary role. Thus, the Commission has determined not to adopt Timex's proposal.

Finally, the Commission is deleting the definitions of "plate" or "plated" and of "electroplate" or "electroplated" from section 245.1. These terms are used in section 245.3, which deals with misrepresentation of metallic composition, and their meaning is clear in the context of that section.

D. Misrepresentation of Metallic Composition of Watchcases: Section 245.3

The Commission believes that section 245.3 is more regulatory in tone than appropriate for guides, and thus has redrafted it to describe unfair or deceptive acts and to establish "safe harbors" (*i.e.*, examples of ways of avoiding misrepresentations). In the proposed Guides, section 245.3(b) identifies specific practices that may be misleading and section 245.3(c) lists markings and descriptions that are consistent with the principles described in the section. The latter provisions are "safe harbors." As discussed in more detail below, the Commission proposes deleting several subsections. Also discussed below are some additional issues raised by the JVC's petition and the comments.

1. Requirement That Metallic Composition be Marked

The preamble to section 245.3 advises industry members not to misrepresent

the metallic composition of a watchcase in advertising, labeling, brand or trade name, or otherwise. However, it provides that for "cases having an exposed surface or surfaces which are or have the appearance of being metal, the metallic composition of the cases should be clearly and conspicuously disclosed in accordance with the methods and terminology set forth below." The requirement that metallic composition be marked is also contained in subsections (c)-(j), each of which states that watches of a certain metallic composition "should be marked" in a certain way.

The requirement that metallic composition be disclosed is most important for watches made of base metals, since the sellers of such watches might otherwise choose to say nothing about their metallic composition. However, it seems likely that a reasonable consumer would assume that a seller would want to tout the precious metal content of a watch, and therefore the consumer would assume that an unmarked watch was made of base metal. Subsection (j) requires that watchcases or parts that do not meet the minimum requirements for marking as precious metals be marked as "Base Metal" or with the specific base metal(s) of which they are composed, such as "Chromium Plated Steel." Timex proposed exempting from this requirement watches that sell at retail for less than \$100 and make no claim of precious metal content. Timex pointed out that few, if any, watches selling below \$100 contain cases or parts that qualify as precious metal under the Guides, and, for such watches, the base metal "markings are of no meaning or value to the consumer and only an administrative and financial burden to manufacturers of low priced watches."²³

The Commission believes that it is unlikely to be unfair or deceptive to *fail to mark* a watch as to metallic composition and proposes deleting the requirement. However, some comments generally supported the marking requirements, pointing out that the disclosure lessens the chance that consumers will be misinformed. Apparently, the general theory is that the existence of the indelible "Base Metal" marking can deter misrepresentations of precious metal content by making them less likely to succeed; an absence of marking reinforces the incentives of unscrupulous watch sellers to make misrepresentations. The Commission is aware that the Watch Guides have

²¹ Comment 239, p.8.

²² *Id.*

²³ Comment 239, p. 5.

provided for base metal disclosures for decades and the watch industry has followed this practice for many years. Therefore, the Commission solicits comment on whether or not the requirement should be deleted.

2. Gold and Gold Alloy Coatings: Subsections (b)-(g)²⁴

Subsection (b) of section 245.3 restricts the use of "gold" to 24 karat gold, and (c) states that "gold," when applied to alloys of gold, should be immediately preceded with a correct designation of the karat fineness. There were no comments on these subsections, and the Commission only proposes changing the language to a description of unfair and deceptive acts, in proposed sections 245.3(b)(1) and (b)(2), coupled (in the case of alloys) with a "safe harbor," in proposed section 245.3(c)(1).

Subsection (d) sets a standard for use of "gold filled," (three one-thousandths of an inch of mechanically-plated gold of not less than 10 karat fineness, or approximately 75 microns) and subsection (e) sets a standard for use of "gold plate" or "rolled gold plate" (one and one-half thousandths of an inch of mechanically-plated gold of not less than 10 karat fineness, or approximately 37.5 microns.) An expansion of the meaning of "gold plate" was suggested, and is discussed at subsection b. *infra*. No comments objected to the current requirements for the use of the terms "gold filled" or "rolled gold plate," and the Commission proposes maintaining these requirements as "safe harbors" for the use of these terms. However, ISO Standard 3160-1 (Watch cases and accessories—Gold alloy coverings—Part 1: General requirements) allows the use of "rolled gold" for products with 5 microns of 10 karat gold, although the ISO Standard does not allow the karat fineness to be marked.²⁵ Accordingly, the Commission solicits comment on whether the "safe harbor" for "rolled gold" should be changed to conform with the ISO standard (*i.e.*, from 37.5 microns to 5 microns).

a. Thickness of Gold Electroplate

Section 245.3(f) advises industry members to mark as "gold electroplate" or "gold electroplated" watchcases which have been electroplated with gold or a gold alloy of not less than 10 karat fineness to a thickness throughout

of not less than $\frac{3}{4}$ 1000ths of an inch (approximately 19 microns), and which can successfully withstand the adhesion, hardness, and porosity tests set forth in the appendix. If the gold electroplate is at least 1 and $\frac{1}{2}$ 1000ths of an inch thick, it may be described as "Heavy Gold Electroplate."²⁶ Section 245.3(f) permits a designation of the karat fineness of the gold coating to be placed immediately before the terms "gold electroplate," "gold electroplated," or "heavy gold electroplate."²⁷ Sellers also may disclose the actual thickness of the electroplate.²⁸

The JVC proposed no changes in the current thickness required for gold electroplate. Several watch industry commenters, however, urged that the current standard be lowered. The Swiss Federation proposed lowering the minimum standard to conform to current Swiss law (8 microns) or the ISO standard (5 microns).²⁹ Similarly, Japan Watch commented that the standard should conform to ISO Standard 3160-1, which requires a thickness of at least 5 microns of 14 karat gold for an item marked as gold plate.³⁰ This standard also requires disclosure of the nominal thickness of gold coating in micrometers (microns).³¹ Both Japan Watch and the

²⁶No comments objected to the standard for heavy gold electroplate.

²⁷ISO Standard 3160-1 prohibits, in section 7.4, any mention of karat fineness of the gold alloy electrodeposit, although it must be at least 14 karats. Japan Watch (216) explained, at p. 4, that the karat mark is not put on the product lest it mislead consumers into thinking the item is solid gold, rather than merely plated. The Commission has received no complaints from consumers indicating that they misinterpreted the mark "14k Gold Electroplate" to mean solid 14 karat gold alloy. Nevertheless, the Commission solicits comment on whether this portion of subsection (f) should be changed to conform to the ISO standard. The ISO standard also requires, in section 7.6, a marking of the "nominal value" of the thickness in microns. The concept of "nominal value" appears to treat a thinner layer of higher karat gold as equivalent to a thicker layer of lower karat gold (*e.g.*, 1 micron of 24 K is equivalent to 2 microns of 12 K).

²⁸Current section 245.3(d), (e), and (f) and paragraph 1 of the appendix currently allow a twenty percent tolerance in measuring the thickness of gold plating. With respect to "gold plate" (which includes gold electroplate) and "rolled gold," the ISO standard allows, in section 6.1, for a 20% tolerance. However, paragraph 1 of the appendix, unlike the ISO standard, requires that the total quantity of precious metal plating be "sufficient to equal the quantity necessary to provide the specified minimum thickness on all points on such watchcase including the thinnest point." The Commission solicits comment on whether this qualification of the tolerance is necessary.

²⁹Comment 232, pp.26-27.

³⁰Comment 216, p.4 and Annex 7.

³¹Note that the electroplate thickness standards differ both in terms of the micron thickness and the karat fineness of the gold used. The ISO standard of 5 microns of 14 karat gold would be equivalent to 7 microns of 10 karat gold. The U.S. Watch

Swiss Federation argued that the lack of consistency with international standards limits access of U.S. consumers to products sold overseas, and adds to the costs of watches designed for the U.S. market.³²

Other comments indicated that the current Guide's thickness standard is obsolete, because technology now permits a thinner yet durable layer of gold to be deposited electrolytically.³³ Benrus suggested a one micron standard for gold electroplate, based on use of that "standard" by a large segment of the watch industry and the fact that one micron or more of plating "has substantial durability and reliability and gives years of satisfactory service."³⁴ The U.S. Watch Council also asserted that the industry follows a basic standard of 1 micron of thickness (40 millionths of an inch of 23 karat gold) for gold electroplating.³⁵ North American Watch stated that "it is routine to apply a gold electrodeposit of more than 10 karat fineness with a thickness of, for example, 2 microns."³⁶

The Commission believes that it is useful for the Guides to establish a "safe harbor" for the use of the term "gold electroplate," but that the current 19 micron standard is far above what is necessary to prevent unfair and deceptive acts. It may also unnecessarily limit competition among gold electroplated watchcases and between gold electroplated watchcases and watchcases made of gold-colored base metal. Lowering the minimum thickness would allow industry members who wish to comply with the Guides to describe their products accurately, by identifying as "gold electroplate" watches that have a coating of gold alloy less than 19 microns thick. Currently, the Guides provide that such watches may be identified only as base metal. The consumer has no way to distinguish them from watches that actually are made of base metal. The Watch Council argued that the "consuming public

Council's proposal of 1 micron of 23 karat gold, discussed *infra*, would be equivalent to 1.64 microns of 14 karat gold or 2.3 microns of 10 karat gold.

³²Comment 216, p.1; Comment 232, p.24.

³³Benrus (22) p.2.

³⁴*Id.* at 1-2. *But see* Newhouse (76) pp.2-3 (stating that electroplate surfaces are less durable than mechanically plated gold and recommending a minimum thickness of 20 microns).

³⁵Comment 118, p.1.

³⁶Comment 251, p.3. It opposed any minimum standard for the thickness of gold electroplate on watches, except when an affirmative representation of thickness, such as "heavy gold electroplate," is made, but stated that the existing standard of 1500 millionths of an inch for "heavy gold electroplate" is acceptable. *Id.* at 5.

²⁴Subsection (a) exempts certain parts (*e.g.*, springs) from any determination of metallic composition. There was no comment on this subsection and the Commission proposes no change other than redesignating it as subsection (e).

²⁵ISO Standard 3160-1 is attached as Annex 7 to the comment of Japan Watch (216).

should be able to choose watches with better levels of electroplating.”³⁷

Although lowering the minimum thickness required for gold electroplate would allow consumers greater choice of products, it also has the potential to increase incentives and opportunities for industry members to misrepresent the thickness of the gold electroplate of their products. The current Guides do not require, but merely allow, a disclosure of the actual fineness and thickness of the gold electrodeposit. The Commission recognizes that manufacturers and sellers of watches with thicker layers of gold electrodeposit are likely voluntarily to disclose the amount of gold electrodeposit to advertise a higher value or longer life for their products. Nonetheless, lowering the minimum thickness requirement from one with which the industry and consumers have had decades of experience dramatically broadens the range of products to which the term “gold electroplate” properly may be applied. The amount of gold electrodeposit necessary to provide lasting and effective service as a gold electroplated watch could vary considerably according to the expected life of the watch. Because a much broader range of products may be sold as gold electroplate if the Commission lowers the minimum thickness requirement, the Commission believes that manufacturers and sellers of watches with thinner coatings of gold electrodeposit would have an incentive not to disclose the actual thickness and actual karat fineness. The lack of such a disclosure is likely to cause substantial and unavoidable consumer injury by leading consumers to believe that all gold electroplate watches lacking such a disclosure are equally valuable and equally durable.

Furthermore, none of the comments addressed what consumers expect to receive when they purchase a watchcase marked “gold electroplate.” Some consumers may expect they are getting a watchcase with a relatively thick, durable layer of gold electrodeposit, because the U.S. standard historically has been high. Established consumer expectations therefore weigh in favor of disclosing the actual thickness of gold electroplate, if the minimum thickness for use of the term gold electroplate is drastically lowered. It is likely that a significant number of reasonable consumers may assume that watches marked “gold electroplate” satisfy the same relatively thick standard of 19 microns of at least 10 karat gold that has been used for decades, unless they

know the actual thickness and karat fineness.

In addition, if the thickness and karat fineness of the gold electrodeposit are marked, consumers will be better able to comparison shop between watches with differing quantities of gold electrodeposit. Consumers who value more highly a thicker or finer layer of gold (or simply more total gold) will have the information that allows them to select the watch that best serves their particular needs. Consumers who are willing to accept a watch with a thinner or lower karat layer of gold in exchange for a lower price will be able to determine whether they are paying a price commensurate with the actual thickness and karat fineness of the gold electrodeposit. The Commission notes that the ISO standard for gold plate also requires disclosure of the actual minimum “nominal thickness,” a comparable concept.³⁸ The Commission proposes that the revised Guides include a “safe harbor” for gold electroplate claims that include a statement of actual thickness and actual fineness, and solicits comment on this change, including whether “nominal” thickness would be preferable.

With regard to the inclusion of a minimum thickness in the “safe harbor,” the Commission finds persuasive the comments of NAW, Benrus, and the Watch Council indicating that electroplating of as little as 1 or 2 microns of fine gold comports with industry practice and, due to technological advances in electroplating, is sufficient to render lasting and effective service for inexpensive watches intended to last only a couple of years. The ISO standard advocated by the Swiss Federation and Japan Watch appears overly restrictive in light of such advances. Nevertheless, the Commission solicits comment on whether the minimum thickness requirement in the ISO standard (5 microns of 14 karat gold) is preferable to 1 micron of 23 karat gold.

As Japan Watch pointed out, for a product marked “gold plated,” the ISO standard requires that the alloy be of at least 14 karat fineness.³⁹ Section 245.3(f), however, requires a minimum of 10 karat fineness. The Swiss Federation suggested lowering the

³⁷ As noted, the ISO standard specifies that karat fineness cannot be marked but that “nominal thickness” must be marked. For “gold plate” (which, in the ISO standard includes electroplate), there must be a 14 karat minimum. Thus, the marking indicating “nominal thickness” would be the same for a product that contained, e.g., 5 microns of 14 karat gold, as for a product that contained 3.5 microns of 20 karat gold.

³⁸ JCWA (216) p.4.

minimum fineness requirement to 9 karats to conform with Swiss law and unspecified “developments” in the European Community.⁴⁰ Neither the JVC nor any other commenter advocated changing the existing minimum fineness requirement. Because there is insufficient information on the record to warrant departing from the existing minimum fineness standard, the Commission does not propose changing the 10 karat minimum fineness for gold electroplate.⁴¹

Finally, the Commission proposes deleting the current requirements that the electroplated product pass the adhesion, hardness, and porosity tests described in the Appendix to the Watch Guides. None of the commenters suggested retaining these tests, and the Commission has concluded that these tests reflected industry practice in the 1960’s, before current methods of gold electroplating existed and do not reflect current industry practice. In addition, the ISO standard for gold plate does not rely on any tests other than tests to confirm the minimum thickness and fineness.

b. Gold Plate

The Watch Guides recognize only electrolytic and mechanical means of applying gold plate. Further, section 245.3(e) limits use of the term “gold plate” to watchcases to which a layer of gold has been mechanically applied to a thickness of at least one and one half one thousandths of an inch (37.5 microns). Such watchcases alternatively may be identified as “rolled gold plate” under the current section 245.3(e).

Citizen urged that use of the general term “gold plate” not be restricted to any particular method of applying gold covering, but rather be used to inform consumers that the article so designated has a surface covering of gold.⁴² The

⁴⁰ Comment 232, p.26.

⁴¹ 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 U.S. Department of Commerce. It was incorporated into the Trade Practice Rules for the Jewelry Industry, 16 CFR Part 23, in 1957. In 1977, the Commission proposed permitting sellers to market gold of less than 10 karat and silver of less than 92.5% if the quality was accurately disclosed. This proposal was published for public comment. Over 1200 comments were received, many from consumers, and over 98% of the comments opposed lowering the standard. The Commission found, based on articles and test reports, that articles of less than 10 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 29,916, 29,917 (1977).

⁴² Comment 228, p.3. Citizen described a new method of applying gold covering, “ion plating,” and suggested that the Guides contain a provision regarding this new technique and the use of the

³⁷ Comment 118, p.1.

Commission agrees that the term gold plate should apply to both mechanically and electrolytically plated watches. As the ISO standard recognizes in its definition of gold plate, a gold plated covering may be achieved by electrolytic, chemical, or other means. The current Watch Guides may limit competition and consumer choice by preventing an industry member from describing its product as "gold plate" if it has a durable layer of gold coating applied by any means other than mechanical. Accordingly, the Commission proposes removing the term "gold plate" from current section 245.3(e) and defining gold plate to cover any industry product to which a surface coating of gold has been applied by any method. The Commission seeks comment on this change.

However, consumers are likely to expect a minimum level of durability from an item labeled "gold plate." Accordingly, the Commission believes that the Guides should inform the industry of the conditions under which use of the term "gold plate" would not be deemed unfair or deceptive. The ISO Standard 3160 for gold plated watches requires a minimum thickness of 5 microns of 14 karat gold for gold plate regardless of the method by which it is applied. The Commission believes that the 5 micron ISO standard for gold plated watchcases provides a supportable safe harbor for application of a broader, inclusive gold plate designation for watchcases. However, for gold *electroplated* watchcases, the record evidence (as discussed above) supports an even lower, 1 micron of 23 karat gold, or its equivalent, safe harbor.⁴³ The Commission would not exclude from the broad "gold plate" category those gold *electroplated* watches that fall below the stricter ISO minimum thickness of 5 microns, but satisfy revised section 245.3's gold electroplate requirements. Accordingly, the Commission proposes a minimum safe harbor for application of the term "gold plate" if one of two conditions are met: (1) the plating meets the thickness requirements in revised section 245.3, for gold electroplate (*i.e.*, a thickness

term "Gold Ion Plate." However, it offered no reason why there is a need to identify the specific method of plating, and no evidence that indicates that consumers care about the method by which gold coating is applied. According to the Commission's proposed revisions, discussed above, gold ion plated watchcases could be identified as "gold plate" or "gold plated."

⁴³ As noted, no comments suggest changing the Watch Guides' current minimum thickness safe harbors for gold filled watchcases (three one-thousands of an inch or 75 microns) or rolled gold watchcases (one and one-half one thousands of an inch or 37.5 microns).

equivalent to 1 micron of 23 karat gold for gold electroplate),⁴⁴ or (2) the watchcase has a gold coating at least 5 microns thick of 14 karat gold or the equivalent (*i.e.*, it satisfies the ISO standard).

As proposed, the term "gold plate" would cover a broad range of watchcases with gold coatings that may vary considerably in thickness and durability. Accordingly, to ensure consumers are not deceived by the term "gold plate," the Commission also proposes that the actual minimum thickness and fineness of the gold plating be disclosed in microns on the watchcase in close proximity to the mark identifying the watchcase as gold plate. (Because the ISO standard requires the marking of the "nominal thickness," the Commission seeks comment on whether the "nominal thickness" or the actual karat fineness and thickness should be so disclosed.)

Finally, the Commission proposes deleting current section 245.3(l), which states that if the plating is not of a sufficient thickness as to render lasting and effective service, there must be a disclosure of this fact on a tag, label, or other printed material which accompanies the watch. The Commission believes that the revised "safe harbor" provisions, discussed above, describe non-deceptive use of certain terms, such as "gold plate" and make this provision unnecessary.

c. Use of Terms "Gold Flashed" and "Gold Washed"

The JVC proposed adding a sentence to the definition of "gold electroplate" in section 245.3(f) to provide that "[w]hen the gold electrodeposit is less than 75 millionths of an inch, and meets the minimum [10 karat] fineness, the case may be marked or described as 'gold flashed' or 'gold washed.'" ⁴⁵ The Watch Guides currently do not permit use of the term "gold flashed" or "gold washed," although these terms are used for jewelry.⁴⁶

Several commenters opposed the use of these terms for watches, for various reasons.⁴⁷ None of the comments indicated that members of the watch industry currently use the terms gold washed or gold flashed. Further, the

Commission is not aware of any international standard for gold flashed or gold washed watches.

However, under the current Guides, manufacturers of watches that use gold electrodeposit in amounts too small to be able to identify the watches as "gold electroplate" are unable to inform consumers that the watch contains gold at all. The Commission's proposed revisions to the gold electroplate and gold plate provisions acknowledge the technological advances and allow manufacturers of watches with a thinner, yet durable coating of gold to indicate to consumers that the item is plated with gold. Under the proposal, industry members could apply the terms "gold electroplate" or "gold plate" to watchcases covered with gold alloy of at least 23 karat fineness to a thickness of at least 1 micron (40 millionths of an inch) or the equivalent (*e.g.*, 2 microns of 11.5 karat fineness). There is no evidence that surface deposits of gold alloy of less than 40 millionths of an inch are sufficient to render lasting and effective service during the life of the watch. Thus, the Commission has not included a provision regarding the use of the terms "gold flashed" or "gold washed."

3. Vermeil

The JVC proposed a standard definition for a "vermeil" watchcase of a silver base coated with gold.⁴⁸ The JVC's proposal states that a watchcase cannot be described as "vermeil" unless it has a sterling silver base, with a gold coating of at least $\frac{3}{4}$ of 1,000th of an inch (approximately 19 microns) of 10K gold or better, applied either by mechanical bonding or electroplating. The FRN solicited comment on this proposal.

Most comments specifically addressing vermeil watchcases agreed with the JVC's proposed standard without stating any specific reasons.⁴⁹ Other comments advocated adopting a vermeil standard, but did not indicate whether the JVC's proposal was the appropriate standard nor did they offer an alternative.⁵⁰ Other comments indicated that the JVC's vermeil standards for watches differed from the JVC's proposal for vermeil jewelry.⁵¹

⁴⁸ JVC Petition, § 23.25, Section III, (i).

⁴⁹ JMC (1) p.1; Fasnacht (4) p.1; Estate (23) p.1; Handy (62) p.1; Newhouse (76) p.3; MISA (226) p.10; and AWA (236) p.2 (endorsing the JVC's vermeil proposal because such watches "are a distinct product and should be subject to specific standards").

⁵⁰ Phillips (204); Leach (257) p.6.

⁵¹ Canada (209) p.5 (advocating the same vermeil standard for both jewelry and watchcases, because the term would be better understood by consumers

The inclusion of a definition of vermeil could help prevent deceptive uses of the term, to the extent that consumers expect or may come to expect that items sold as vermeil conform to industry usage of that term. The basic premise that it is deceptive to sell a product identified as having a specific metallic composition when it does not conform to consumer's expectations of characteristics associated with that term (e.g., quality and durability)—apply with equal force to vermeil.

None of the comments, however, establish a need for a vermeil standard for watches. Only Japan Watch indicates that there is current production of vermeil watchcases, but it does not indicate that such watches are being sold in the United States. Accordingly, the Commission does not propose to include a vermeil standard, because there appears to be no need to do so to prevent consumer deception.

4. Silver and Silver-Plated Watchcases

Section 245.3(g) states that use of the terms "silver," "sterling," or "sterling silver" is deceptive unless the watchcase contains at least 925 parts per thousand silver, and that use of the term "coin silver" is deceptive unless it contains 900 parts per thousand silver. Section 245.3(h) states that watchcases "which have been plated or electroplated with silver should be marked as 'silver plate' or 'silver plated,' if after the completion of all finishing operations, such plating is of sufficient thickness to withstand normal use and last throughout the estimated life of the watch."

The JVC proposed adding the following sentence to this section: "The term 'Sterling' shall not be applied in any manner to a silver-plated watchcase."⁵² This change merely states in the negative what is stated affirmatively in sections 245.3(g) and (h) of the current Watch Guides. These provisions are derived from the National Stamping Act, which states that silverplated articles shall not "be stamped, branded, engraved or imprinted with the word 'sterling' or the word 'coin,' either alone or in conjunction with other words or marks." 15 U.S.C. 297(a). The Commission believes that the best way to convey this information is by a Note

if used consistently); Citizen (228) p.3 (stating that it did not object to a vermeil watchcases standards, but questioning why it should be significantly greater than the JVC's proposed vermeil jewelry standard); and Sheaffer (249) p.5 (stating that the minimum vermeil standard should be the same for all entities).

⁵²JVC Petition, § 23.25, Section III. (g)

referencing this section of the National Stamping Act.

5. Metallic Composition of Parts of Watchcases

Section 245.3(k) specifies that watchcases composed of parts having different metallic compositions shall be marked as prescribed for watchcases, with an accompanying explanation of the part or parts to which such markings or descriptions apply, such as "14 K Gold Filled Bezel."⁵³ Japan Watch advocated that only the metallic composition of "major parts" (that is, center, bezel and back) be disclosed.⁵⁴ Although the Commission believes, as noted above, that it would probably not be unfair or deceptive to simply fail to mark a watch as to metallic composition, it might well be unfair and deceptive to mark part of a watch as, e.g., gold, when other parts are not gold but are similar to gold in appearance. Hence, in proposed Guide section 245.3(d), this section has been redrafted to state that if a watchcase is composed of parts having different metallic compositions, and has exposed surfaces that are or have the appearance of being metal, a mark placed on the product that indicates the metallic content of the product should be closely accompanied by an identification of the parts to which the mark applies. The Commission requests comment on this change.

6. Location of Markings and Abbreviations: Section 245.3(m)

Subsection (m) states that all markings of metallic composition should be of a permanent type placed on the exterior, exposed surface of the back of the watchcase. The metallic composition of a permanently attached watchband, however, may be disclosed either on the band or on the back of the watchcase. The JVC proposed no change, but the FRN solicited comment on the section.

Nearly all comments that specifically addressed this issue supported retaining the current marking requirements.⁵⁵ Other comments indicated that the section prevents misrepresentations and lessens the chance that consumers

⁵³Current section 245.3(a) specifies that certain parts, such as springs, that are necessarily required to be of some base metal, may be excluded in determining the metallic content of a watchcases.

⁵⁴Comment 216, p.3.

⁵⁵JMC (1) p.1; Fasnacht (4) p.2; Estate (23) p.2; G&B (30) p.10; Jabel (47) p.2; Handy (62) p.6; ArtCarved (155) p.6; Bales (156) p.11; IJA (192) p.5; Bedford (210) p.3; and Citizen (228) p.4. Canada (209) p.5 stated, without explanation, that "this question deserves further review."

receive misinformation.⁵⁶ However, the National Stamping Act explicitly allows marking by means of a label or tag. Moreover, a marking could be satisfactory if it is somewhere other than on the back.⁵⁷ The Commission proposes deleting the portion of subsection (m) that requires that a watch be permanently marked and that it be marked on the back.

Subsection (m) also contains statements about the conspicuousness of markings that may be appropriate. In addition, subsection (m) states that certain abbreviations may be used (e.g., "R.G.F." for rolled gold plate) but that the word "electroplate" may not be abbreviated. In the proposed Guides, these issues are addressed in subsections 245.3(c)(2)–(5). The Commission proposes omitting the prohibition on abbreviating electroplate.

7. Misuse of Terms: Section 245.3(n)

Section 245.3(n) of the current Guides provides that: "The words 'gold,' 'karat,' 'silver,' 'sterling,' 'coin,' or any abbreviation thereof either alone or in conjunction with other words such as 'solid,' 'plate,' 'plated,' 'filled,' 'electroplate,' or 'electroplated' or any abbreviation thereof should not be used as a marking or as descriptive of a watchcase or part thereof in labeling, advertising, trade names or otherwise in a manner inconsistent with the provisions of this section." This subsection could be read to make the use of the terms discussed in other subsections mandatory. As discussed above, the Commission proposes revising the Guides to set forth safe harbors (examples of marking and descriptions that would not be considered to be misleading) and recognizes that there may be other non-deceptive terms that could be used to describe an item. Because subsection (n) is unnecessary and provides no additional information to the reader, the Commission proposes deleting it.

8. Disclosures in Advertising: Section 245.3(o)

Section 245.3(o) urges disclosure in advertising and promotional material of the information about metallic composition placed on industry products in conformity with section 245.3, when failure to make such a

⁵⁶Sibbing's (5) p.2; Bridge (163) p.3 (stating that "[m]arking the actual metal composition of each watch case on the watch case helps prevent misrepresentation").

⁵⁷See USWC (118) p.1 (favoring deletion of the requirement that required disclosures be made on the back of watchcases, stating out that casebacks may have ornamental designs, names or award engravings on them, or be the back side of a coin or medallion, or have transparent glass lenses).

disclosure would create the false impression that the product is of a certain metallic composition. However, current section 245.2 admonishes against misrepresentation in general, including misrepresentation as to "substance." Thus, the Commission proposes deleting it.

E. Misrepresentation as to Durability or Suitability: Section 245.4

This section informs industry members that they should not misrepresent the characteristics of a product, its ability to resist or withstand damage from stated causes, or its suitability for a particular use, such as a chronometer or for skin diving. Although neither the JVC nor the commenters proposed changes to this section, commenters did propose changes to other sections that the Commission believes are best addressed in this section.

As discussed *supra*, the Swiss Federation proposed the addition of a definition for "chronometer" based on the ISO standard, which would require industry members to test and obtain a certificate before describing a watch that keeps time with precision as a chronometer. No evidence has been brought to the Commission's attention indicating that consumers believe use of the word "chronometer" alone, without any reference to testing and certification, means that the device has been tested and certified. However, because section 245.4 prohibits misrepresentation of chronometers, the Commission has tentatively determined to take into account the international standard that exists for chronometers. Specifically, the Commission proposes including a Note to section 245.4 stating that conformity to the ISO definition constitutes a "safe harbor" for a claim that a watch is a chronometer. The Commission seeks comment on this change.

AWI and Japan Watch asked the Commission to expand the Guides to include definitions and tests for divers' watches, and Japan Watch suggested the use of the ISO standard.⁵⁸ The Commission is not aware of any consumer complaints that a watch sold as a diver's watch did not satisfy consumers' expectations of what a diver's watch is. However, because there is an ISO standard concerning divers' watches, the Commission seeks comment on adding a Note establishing the ISO standards for divers' watches as a "safe harbor" and seeks comment on

this change. If such a note proves unnecessary, the Commission proposes consolidating section 245.4 into 245.2 (Misrepresentation in general).

F. Misrepresentation of Protective Features: Section 245.5

Section 245.5(a) is repetitive of section 245.4 in that it cautions against misrepresenting the ability of a product to withstand or resist damage or other harmful effects from stated causes. However, it specifically states that a product should *not* be described as "shockproof," "waterproof," "nonmagnetic," or "all proof." No comments objected to this provision, and therefore, the Commission has retained it in the proposed Guides. The Commission, however, seeks comment on whether this provision is necessary and desirable.

Section 245.5(a) also states that products may be described as "shock resistant," "water resistant," or "antimagnetic" if they withstand tests described in the appendix to the Watch Guides. The JVC proposed no changes to this section. The FRN solicited comment on whether the current definitions and tests for protective features of watchcases (e.g., water resistance, shock resistance) described in this section should be retained.

Most commenters who addressed this issue favored retaining the current definitions and tests.⁵⁹ Two jewelry industry members suggested updating the tests, but did not explain how or why.⁶⁰ Four watch industry commenters suggested revising one or more of the tests or definitions.⁶¹ All of these commenters appeared to view the use of definitions and tests in the Guides as useful. The Swiss Federation noted that consumers cannot easily confirm that watches are water resistant, shock resistant, or anti-magnetic.⁶² The

Swiss Federation and Japan Watch, however, recommended substituting ISO standards in some instances for those currently being used. The Commission agrees that industry is likely to need guidance with respect to what constitutes an adequate basis for claiming that a watch is water resistant, shock resistant, or anti-magnetic, and that the creation of "safe harbors" for the non-deceptive use of these terms is beneficial to industry and consumers.

1. Water Resistance of Watches

Section 245.5(a)(2) provides that the term "water resistant" may be applied to an industry product that is sufficiently impervious to water and moisture so as to insure that it will successfully withstand the test described in paragraph 4 of the appendix to the Watch Guides. That test requires that the watch being tested be immersed in water for specified periods at specified pressures and not admit any water or moisture.

The Swiss Federation and Japan Watch recommended adopting the tests used in ISO Standard 2281-1990(E).⁶³ ISO Standard 2281 provides two alternative sets of tests. One uses a water pressure test and involves immersion in water for specified periods at specified temperatures. The other uses an air pressure test.

Timex contended that the current water resistance test is outmoded and unduly burdensome. It advocated a test for water resistance that would expose watches to helium pressure equivalent to water pressure at 15 pounds, but recommended considering the ISO standard as an alternative.⁶⁴ AWI did not specifically reference the ISO test, but commented that the test for water resistance should allow for testing with new, waterless testers.⁶⁵

Based on its comparison of the ISO standard and the existing test, the Commission is satisfied that both methods test whether pressure, to a level consistent with ordinary use of a water resistant watch, results in condensation or moisture inside the watch. Based on the widespread use of the ISO test, and its apparent compatibility with the purposes and measure of success of section 245.5's test for water resistance, the Commission proposes revising section 245.5 to identify safe harbors for use of the term "water resistant" for watches that satisfy either the current test or the requirements of ISO 2281.

⁵⁹ Benrus (22) p. 2; Citizen (228) p. 4 (stating that there is no evidence that watches meeting the current standards do not provide "adequate performance" and stating that the industry has responded to the market by selling and marking water resistant watches for specialized uses); AWA (236) p. 2 (stating that there is no evidence of consumer dissatisfaction with the standards, that the standards safeguard against problems arising under normal conditions, and that consumers requiring watches for special circumstances, such as diving, can purchase products marked for such purposes). Eleven members of the jewelry industry supported the existing definitions and tests, but did not explain why. JMC (1); Fasnacht (4); Sibbing's (5) (stating that the existing definitions and tests have worked well and there is no reason to change them); Estate (23); Jabel (47); Handy (62); McGee (112); ArtCarved (155) p. 6 (supporting established, published standards in general); Bales (156); LaPrad (181); IJA (192); Leach (257).

⁶⁰ Bridge (163) p. 3; Bedford (210) p. 3.

⁶¹ See discussion, below, regarding the comments of Swiss Federation, Timex, JCWA and AWI

⁶² Comment 232, p. 5.

⁶³ Swiss Federation (232) pp. 5, 21-22; JCWA (216) p. 3.

⁶⁴ Comment 239, pp.6-7.

⁶⁵ Comment 116, p.1.

⁵⁸ AWI (116) p.1; JCWA (216) p.3. The ISO standard for divers' watches is ISO 6425—Divers' Watches.

On the basis of the limited descriptions of the alternative tests proffered by Timex and AWI, the Commission is unable to evaluate whether such alternatives would satisfactorily measure water resistance.

2. Shock Resistant Watches

Section 245.5(a)(1) and paragraph 3 of the appendix currently require that to be identified as "shock resistant" or "shock absorbing," an industry product must be sufficiently resistant to shock to withstand certain shocks equivalent to being dropped from a height of three feet onto a horizontal hardwood surface without losing more than 60 seconds per day in timekeeping accuracy or damaging the physical condition of the product. Timex noted that the current test for shock resistance applies only to mechanical watches, and should be expanded to cover quartz watches.⁶⁶ The Swiss Federation and Japan Watch advocated adopting the test for shock resistance used in ISO Standard 1413-1984(E).⁶⁷ The ISO uses a test to simulate the shock received by a watch in falling one meter onto a horizontal hardwood surface. It requires that the residual effect on accuracy of quartz watches not exceed 2 seconds per day and that the residual effect on accuracy of all other watches not exceed 60 seconds per day.⁶⁸ The Swiss Federation noted that the ISO's test for mechanical watches does not differ materially from the current Guides. The test for quartz watches, however, imposes a stricter timekeeping requirement than for mechanical watches.⁶⁹

The Commission notes that quartz watches apparently are inherently more accurate than mechanical watches and therefore are held by the industry to a higher standard of minimum accuracy. Accordingly, consumers expect greater accuracy from inexpensive quartz watches than they do from inexpensive mechanical watches. Thus, the Commission proposes updating section 245.5's test to incorporate the ISO residual effect standards that are stricter for quartz watches than for watches with mechanical movements.

The Commission also notes that the language used in the current Guide's test requires observations of a watch's daily timekeeping rate in language that is applicable only to watches with mechanical movements (*i.e.*, the necessary observations are to be made "one hour after the watch has been fully

wound"). Because the test should be applied to all watches claimed to be "shock resistant" or "shock absorbing," the Commission proposes revising the current test to provide that the necessary observations are made either one hour after a watch with a mechanical movement has been fully wound or at least two hours after a quartz watch has been functioning. This approach adopts the ISO standard's pre-test observations of accuracy for quartz watches.

Because many watch industry members are familiar with and support retaining the current test, the Commission proposes identifying two alternative safe harbors for shock resistance: the current test, as updated to apply to quartz watches, and ISO Standard 1413-1984(E). Satisfying either of these tests would be a reasonable basis for claims of shock resistance.

3. Antimagnetic Watches

Section 245.5(a)(3) and paragraph 5 of the appendix allow an industry product to be described as "antimagnetic" if it is designed and constructed to provide a substantial degree of protection against magnetism and will successfully withstand a test that places it in a particular electrical field under specified conditions without altering the daily rate of the watch by more than 15 seconds. The Swiss Federation and Japan Watch urged adoption of ISO Standard 764-1984(E) for antimagnetic watches.⁷⁰

The ISO standard requires placing the watch in a magnetic field of a specified intensity generated by a particular apparatus for several minute long exposures.⁷¹ For mechanical watches, the residual effect must not exceed 30 to 45 seconds per day depending upon the size of the watch; for quartz watches, the residual effect must not exceed 1.5 seconds per day.⁷²

As discussed above, quartz watches generally are expected to be more accurate than mechanical watches. The ISO standard, however, permits mechanical watches today to be less accurate following completion of the antimagnetism test than the test contained in the current Watch Guides. Mechanical watches manufactured today generally may not be as antimagnetic as mechanical watches manufactured thirty years ago, because different metals are used today. Thus,

the ISO standard reflects current industry practice. Accordingly, the Commission proposes incorporating the ISO residual effects for quartz and mechanical watches into the current test and identifying both the revised test and the ISO standard as safe harbors for claims of antimagnetism.

4. Pre-Sale Explanations

Section 245.5(b) states that when a watch described as "shock resistant," "water resistant," or "antimagnetic" is sold to the ultimate consumer, the description should be accompanied by a statement explaining the meaning of the term and the care and maintenance required. This statement should also be made on "any point of sale material describing or referring to the watch having the designation in question and on a label or tag firmly affixed to the watch bearing the designation." Timex requested that the Commission revise this provision, arguing that it is "clearly impractical" in mass merchandising and that it is sufficient to provide the explanation, care, and maintenance statement in instruction booklets and catalogs.⁷³

The Commission has tentatively determined that this section is not necessary to prevent unfair or deceptive practices and thus, proposes deleting the provision. Comment is sought on this change.

G. Proposed "Deception as to Movements": Section 245.6

Section 245.6, "Deception as to jewels," advises industry members not to misrepresent the number of jewels contained in a watch, or that a watch is "jeweled" or contains a jeweled movement. Subpart (a) states that industry members should not describe a watch as "jeweled" unless the movement contains at least seven jewels, each of which protects against wear from friction by providing a mechanical contact with a moving point. Subpart (b) states that industry members should not refer to the number of jewels contained in a watch "unless each and every one of these jewels" protects against wear from friction by providing a mechanical contact with a moving point. Neither the JVC nor the commenters proposed changing section 245.6. The Commission proposes retaining these provisions.

The Commission also proposes addressing in this section the JVC proposal regarding quartz watches. The JVC proposed that the Guides state that "Industry members shall not misrepresent * * * the characterization

⁶⁶ Comment 239, pp.6-7.

⁶⁷ Swiss Federation (232) pp. 20-21; JCWA (216) p.3.

⁶⁸ Horology—Shock-resistant Watches, ISO Standard 1413-1984 (E), ¶ 4.

⁶⁹ Comment 232, p.21.

⁷⁰ Swiss Federation (232) pp.5, 23; JCWA (216) p.3. AWI (116) at p.1, supported the current definition and test.

⁷¹ Horology—Antimagnetic Watches, ISO 764-1984(E), ¶ 5.

⁷² *Id.*, ¶ 4.1, 4.2

⁷³ Comment 239, p.11.

of a watch as a 'quartz watch.' * * * [nor] describe a watch as a 'quartz watch' unless a silicon oxide ('quartz') crystal contained in the watch serves the purpose of dividing time and regulating the time display by means of vibrations of such crystal caused by its placement into an electric field."⁷⁴

Both comments that specifically addressed this proposal stated that the Guides should cover quartz watches and endorsed the JVC's proposal.⁷⁵ Several other comments indicated that the Watch Guides should be updated to reflect the existence of quartz watches, but did not specifically address the JVC's proposal concerning misrepresentation of quartz watches.⁷⁶

The Commission believes the language suggested by the JVC would be helpful to the industry and to consumers by discouraging claims that watches with mechanical movements and containing some amount of quartz as a decorative feature are "quartz watches." Both consumer expectations and commercial practice in the watch industry support limiting the description "quartz watch" to those watches that have quartz movements. Accordingly, the Commission proposes adding a new paragraph regarding quartz watches in section 245.6, and retitling the revised section "Deception as to movements" to reflect its broader applicability.

H. Misrepresentation of Accessories: Section 245.7

Neither the JVC nor the commenters proposed changes to section 245.7, which admonishes industry members not to misrepresent the composition, quality, or other material fact respecting watch accessories. Such accessories, as defined in section 245.1(c), are products, other than watch bands, that are affixed to and sold with watchcases or watches (e.g., bracelets, pins, or pendants). As discussed *supra*, the Commission proposes deleting the definition of "accessories," in section 245.1(c) of the current Guides, and expanding the definition of "watchcase" or "case," in proposed Guides section 245.1(b), to include any *permanently attached* accessory. With this change, section 245.7 is unnecessary; section 245.3, which covers misrepresentation of metallic composition of watchcases, will cover all such permanently attached accessories. The Commission proposes deleting section 245.7, and adding a Note following the definition

of "watchcase" that states, "Detachable metallic watch bands and other accessories of the detachable type are subject to the provisions of the Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR Part 23."

I. Deceptive Selling of Used, Rebuilt, or Secondhand Products: Section 245.8

Section 245.8 requires disclosure of the fact that an industry product or parts are not new, or are used, secondhand, rebuilt, repaired, or refurbished. The disclosure must be made in all product advertising, on the product or a label firmly affixed to the product, and on the immediate container in which the product is sold to the ultimate consumer. Although a disclosure of some type may indeed be necessary to prevent unfairness or deception, the Commission no longer believes that the disclosure is adequate only if it is on the product and on its immediate container. The Commission proposes modifying this provision to require simply that there be a disclosure, without specifying how it must be made. The Commission requests comment on this change.

The JVC proposed adding a second paragraph to this section that would require the disclosure to all subsequent buyers of any alteration to a watch manufactured under a brand name or trade name. Such alterations would include modification, removal, or addition of any identifying trademark, name, number, or other information on any part of a trade name or brand name watch, as well as the "unauthorized opening" of a water resistant watch. The person making such an alteration would invalidate the existing warranty, become the new warrantor of the watch, and be required to identify whether the warranty is full or limited. The manufacturer or designer of a brand name or trade name watch would have the option of refusing to honor its original warranty, if it discovers that a watch presented to it for service has been so altered after the watch left the manufacturing facility.⁷⁷

The FRN sought comment on the JVC's proposal. Several comments from members of the jewelry industry supported the proposal with little or no explanation.⁷⁸ One jeweler opposed

changing section 245.8, but provided no reason.⁷⁹ Other jewelry industry comments expressed qualified support for the JVC's proposal, but either opposed any provision that would invalidate a warranty by mere battery replacement or requested clarification as to the definition of "unauthorized opening" of a water resistant watch.⁸⁰

No watch industry commenter expressed support for the JVC's proposal in its entirety. Both Timex and Citizen opposed all of the JVC's proposed warranty provisions, arguing that such provisions conflict with the Magnuson Moss Warranty Act, 15 U.S.C. 2301 *et seq.*⁸¹ Timex pointed out that "[t]he watch warranty may specify this limitation without need for establishing an industry standard."⁸²

Several watch industry commenters strongly opposed the JVC's proposal that any person who opens a "water resistant" watch without authorization invalidates the warranty and becomes the warrantor. Three pointed out that any competent watch repairer should be able to replace a battery without being authorized by the manufacturer of the watch.⁸³ AWI questioned whether the U.S. Customs Service's routine inspection for interior marks on watches would invalidate the manufacturer's warranty under the JVC's proposal.⁸⁴ Similarly, the Swiss Federation submitted that the unauthorized opening of a water resistant watch is better provided for in the warranty itself, rather than by substituting the retailer for the warrantor.⁸⁵

Only two watch industry commenters specifically addressed the aspects of the JVC's proposal pertaining to alteration of *trademarks*⁸⁶ or *brand names*. Because section 245.9 of the Guides currently advises industry members not to imitate, simulate, obliterate, conceal, or remove trade names, tags, or other disclosures on watches under circumstances having the capacity and tendency to deceive the ultimate consumer as to the manufacturer's identity, the product's origin, or in any other material respect, the portion of the JVC proposal dealing with alteration of a trademark or tradename is discussed in more detail *infra* in conjunction with

⁷⁷ JVC Petition, § 23.31.

⁷⁸ Sibbing's (5) p. 2 (particularly supported section dealing with alteration of the watch to avoid harming the reputation of brand name watches); Estate (23) p. 2; G&B (30) p. 10; Jabel (47) p. 2 ("disclosure is a good thing"); Handy (62) p. 10; ArtCarved (155) p. 6 (both the consumer and the manufacturer need to be protected from a third party); Bridge (163) p. 3; Bedford (210) p. 3 (noting that disclosure should also be made if a diving watch will no longer be useable as such); Leach (257) p. 6.

⁷⁹ Fasnacht (4) p. 1.

⁸⁰ Battery replacement: JMC (1) p. 1; Solid Gold (261) p. 3. Authorization: McGee (112) p. 5; IJA (192) p. 5.

⁸¹ Timex (239) pp. 8-9; Citizen (228) p. 4.

⁸² Comment 239, p. 9.

⁸³ Benrus (22) p. 1; USWC (118) p. 1; Citizen (228) p. 4.

⁸⁴ Comment 116, p. 1.

⁸⁵ Comment 232, p. 38.

⁸⁶ Benrus (22) p. 1; Newhouse (76) p. 3.

⁷⁴ JVC Petition, § 23.29.

⁷⁵ AWA (236) p. 2; Citizen (228) pp. 2, 5.

⁷⁶ Swiss Federation (232) pp. 21, 28-29; Timex (239) pp. 6, 8.

section 245.9. The remaining parts of the JVC proposal are discussed below.

Warranty Disclosure

There is no information indicating that the JVC's proposed warranty provisions are needed to prevent unfair or deceptive acts or practices under section 5 of the FTC Act, or to lessen the burdens of existing regulation. The JVC's proposal essentially would require that consumers wishing to maintain the manufacturer's original warranty use only authorized dealers to repair brand name or trade name watches. This would limit competition for watch repair, including simple replacement of batteries. It also would conflict with the Magnuson-Moss Warranty Act's prohibition on tie-in sales provisions in warranties, unless the manufacturer offering the warranty sought and obtained a waiver.⁸⁷

More narrowly drawn language could help the industry avoid practices that the Commission is likely to view as unfair and deceptive. In *Zale Corp.*, 77 F.T.C. 1098 (1970), the Commission determined that representing a watch as guaranteed or under warranty is deceptive if the seller knows or has reason to know that the guarantee or warranty does not apply to the watch.⁸⁸ The Commission believes that it would assist the watch industry in complying with section 5 of the FTC Act to include a specific warning in section 245.8 (revised section 245.7) that a seller should not mislead consumers into believing that a watch which has been altered, repaired, rebuilt, or refurbished is covered by the manufacturer's guarantee or warranty when the seller knows or has reason to know the watch is not guaranteed. The Commission solicits comment on this change.

Used Disclosures

The Swiss Federation also proposed a revision of section 245.8—*i.e.*, it

⁸⁷ See Magnuson-Moss Warranty Act—Federal Trade Commission Improvements Act, 15 U.S.C. 2302(c). It is possible, however, that a seller of a warranted watch could become a co-warrantor under Magnuson-Moss. Certain actions and representations may make sellers of warranted products co-warrantors under Magnuson-Moss. If under state law such a seller is deemed to have adopted any written affirmation of fact, promise, or undertaking with regard to a watch covered by a written warranty. 16 CFR 700.4.

⁸⁸ The Commission alleged, among other things, that the failure of a retail watch seller to disclose that the original watch movement had been removed from a particular manufacturer's watchbase misled purchasers into believing that the watch was the original, unaltered product of that manufacturer. The complaint also alleged that, as a result, many watch manufacturers did not honor their guarantees covering the original watches, and purchasers were misled into believing that the manufacturers would honor their guarantees.

requested that the Commission define a "used" watch so that unscrupulous merchants do not make deceptive consumer sales.⁸⁹ It proposed that the Guides provide that a purchaser may return a product to the original place of purchase within a specified number of days and the merchant may later resell it as new. Even products returned during this period, however, may not be resold as "new" if they bear obvious signs of wear.⁹⁰ A watch would be "used" when it is sold under conditions that begin the running of the manufacturer's warranty, *i.e.*, to unauthorized retailers posing as consumers, or when it is returned after the specified number of days. The Swiss Federation warned that watches sold or returned under these conditions "are often modified, damaged, or otherwise presented for resale under circumstances that facilitate consumer deception."⁹¹

AWA proposed an amendment to section 245.8, which is nearly identical to that suggested by the Swiss Federation,⁹² and which states in part:

A watch or any part thereof is used or secondhand:

- (a) At any time after
 - (i) Its original sale or transfer to a purchaser by a retail seller, or
 - (ii) Immediately after any sale or transfer that initiates the running of a manufacturer's warranty, unless the purchaser or transferee returns the watch to the same retail seller in new and unused condition within 15 days from the date of sale or transfer to such purchaser or transferee.
- (b) Immediately after any sale or transfer that voids a manufacturer's warranty;
- (c) If its case, movement or serial numbers, or other distinguishing numbers or identification marks or trade names or trade marks have been erased, defaced, removed or altered;
- (d) If any serial numbers, identification marks, trade names or trade marks have been concealed under circumstances having the capacity or tendency of deceiving the ultimate consumer as to the identity of the manufacturer, origin of the product, or in any other material respect;

⁸⁹ Comment 232, pp.5, 31.

⁹⁰ *Id.* at 30.

⁹¹ *Id.*

⁹² Comment 236, p.4. The only substantive differences between the Swiss Federation did not specify the number of days during which a watch must be returned to the retail seller to be resold as new, and the Swiss Federation would add language stating that "this return exception will not apply, and the watch will be deemed as used, if it bears obvious signs of wear." Comment 232, p.31. The Swiss Federation noted that some states have statutes "controlling this question." *Id.* at 30 n.16.

(e) if it is rebuilt, repaired, refinished or reconditioned, or contains parts that are used, secondhand, replaced, rebuilt, repaired, refinished, or reconditioned, whether such rebuilding, replacing, repairing, refinishing or reconditioning has been done by the retail seller or another person.⁹³

Citizen opposed AWA's proposed definition of "used or secondhand" as arbitrarily specifying a 15 day return period. "Specifying any return period would impose an impossible burden on retailers and would result in the FTC's obligation to micro manage their return policies."⁹⁴ Further, to the extent that a sale or transfer voiding a manufacturer's warranty, or the alteration or concealment of serial numbers, should be considered "unfair," they should be addressed separately, not deemed to render a product "used" or "secondhand."⁹⁵

The Commission believes that the proposed revisions to current section 245.8 (now 245.7) (*i.e.*, advising against misleading consumers as to the coverage of the manufacturer's warranty) adequately address most of the concerns expressed by the Swiss Federation and the AWA, without placing unnecessary burdens on the industry. That portion of their proposals that deals with removal of trade names or other identification marks is discussed below.

J. Deceptive Imitation, Obliteration, or Concealment of Names, Trademarks, or Marks: Section 245.9

Current section 245.9 advises industry members not to imitate or simulate competitors' tradenames or trademarks, and not to obliterate, conceal, or destroy any disclosures on watch products or their containers under circumstances that would tend to deceive ultimate consumers as to the manufacturer, the country of origin, or in any other material respect.

The JVC proposed no changes to section 245.9. However, as noted above in the discussion of section 245.8, it did propose an addition to section 245.8 that would require the disclosure to all subsequent buyers of any alteration to a watch manufactured under a brand name or trade name, including modification, removal, or addition of any identifying trademark, name, number, or other information on any part of such a watch. Benrus and Newhouse supported this proposal.⁹⁶

⁹³ Comment 236, p.6.

⁹⁴ Comment 228, p.6.

⁹⁵ *Id.*

⁹⁶ Benrus (22) p.1 (stating that alteration of a trade name should not be permitted, nor alteration of a brand name to deceive the purchaser); Newhouse (76) p.3 (stating, without explanation, that

Citizen commented that the JVC's proposed disclosures would be unworkable, pointing out that the premium and award incentive industries frequently add their clients' trademarks to industry products and importers frequently add stones to watches that are imported with empty settings.⁹⁷

Several commenters suggested that the Commission add *counterfeiting* to section 245.9's list of prohibited activities, proscribe both advertising and trafficking in counterfeit watches, and incorporate by reference the language of the 1984 Trademark Counterfeiting Act, 18 U.S.C. 2320.⁹⁸ Citizen commented that the existing prohibition against the imitation or simulation of trademarks of competitors "* * * under circumstances having the capacity and tendency of deceiving the ultimate consumer" conflicts with the Lanham Act and the 1984 Trademark Counterfeiting Act.⁹⁹

The comments correctly note that, unlike the FTC Act, the 1984 Trademark Counterfeiting Act defines "traffic" within the context of defining a federal criminal offense that may occur simply by obtaining control of goods or services bearing a counterfeit mark with intent to transport, transfer, or dispose of such items as consideration for anything of value.¹⁰⁰ Thus, the 1984 Trademark Counterfeiting Act has made many of the activities described in section 245.9 of the Guides criminal.¹⁰¹ Moreover, the Anticounterfeiting Consumer Protection Act of 1996, Public Law No 104-153 (1996), recently strengthened the provisions of the 1984 Trademark Counterfeiting Act. In addition, although not all "passing off" might be defined as counterfeiting, private remedies for these actions exist under the Lanham Act, 15 U.S.C. 1051.¹⁰²

alteration of a brand name should be considered counterfeiting under the Guides).

⁹⁷ Comment 228, p.4 (stating also that even the addition of a label or tag for inventory purposes might be an alteration subject to disclosure under the JVC's proposal).

⁹⁸ AWA (236) pp.5-6; Swiss Federation (232) p.5, p.33; Citizen (228) p.6.

⁹⁹ Comment 228, p.2. Citizen further contended that section 245.9 implies, in conflict with trademark law, that it would be acceptable to imitate or simulate a trademark if disclosure is made. *Id.* This interpretation is not supported by the text of section 245.9.

¹⁰⁰ 18 U.S.C. 2320.

¹⁰¹ *Id.*

¹⁰² In particular, section 43(a) of the Lanham Act, 15 U.S.C. 1125(a)(1), provides a civil remedy when a person uses in commerce "any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such

Guides, as stated in 16 CFR Part 17, are "administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements." They are meant to "provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of the industry." *Id.* The actions described in section 245.9 are illegal under criminal and civil statutes other than section 5 of the Federal Trade Commission Act. Moreover, persons engaging in these actions in spite of the criminal and civil statutes prohibiting them are not likely to voluntarily abandon these practices because the Guides state that they are also illegal under section 5 of Federal Trade Commission Act. Therefore the Commission believes that it may be unnecessary to continue to advise the watch industry that the activities described in section 245.9 of the Guides are illegal under section 5 of the Federal Trade Commission Act. The Commission proposes deleting section 245.9 from the Guides, and seeks comment on this change.

K. Disclosure of Foreign Origin: Section 245.10

Section 245.10 advises, in subsection (a), that watches with movements or movement parts of foreign origin should not be offered for sale or sold without a clear and conspicuous disclosure of the country (or countries) of origin of the movement. This section further specifies that the country of origin of the movement depends upon two factors: (1) Where the movement is assembled and (2) the origin of the parts used in assembling the movement. Under section 245.10(b)(1), if the movement is assembled in the same foreign country in which movement parts constituting 50% or more of the cost to the assembler of all the parts of the movement have been manufactured, the name of that country alone may be used to designate the origin (e.g., "Swiss Made"). Under section 245.10(b)(2), if movement parts constituting 50% or more of the cost to the assembler of all the parts of the movement have been manufactured in a single country different from the country in which the movement is assembled, the names of both countries, and no other country, are used to designate the country of origin of the movement (e.g., "Assembled in France from Swiss parts"). Under section 245.10(b)(3), if the movement is

person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person."

assembled in one country, but movement parts constituting 50% or more of the cost to the assembler of all the parts of the movement have not been manufactured in a single other country, only the name of the country of assembly is to be used, with a disclosure that the parts are partially foreign, imported or domestic, as the case may be (e.g., "Movement assembled in the United States from domestic and imported parts").

The JVC did not propose any changes in this section. However, based on the comments, changes in international trade, and consumer awareness of changes in the marketplace since the Guides were promulgated, the Commission believes that it is no longer necessary to continue to retain Section 245.10 or to otherwise address origin issues in the Guides. Section 245.2 of the Guides, however, will continue to advise that misrepresentation of country of origin is unfair and deceptive.

In the past, failure to disclose foreign origin has been found to violate section 5 of the FTC Act. Commission cases have held that consumers generally expect to see country of origin marks on imported goods (because section 304 of the Tariff Act of 1930, 19 U.S.C. 1304, has required such marks on goods entering the country for many years), and that consumers assume a product without such marking was manufactured in the United States. Commission cases finding that a substantial number of consumers interpret the absence of country of origin marking to mean that a product was made in the U.S. are based on evidence of consumer perceptions in the 1960s or earlier.

In *Manco Watch Strap Co.*, 60 F.T.C. 495, 514-515 (1962), the Commission created a rebuttable presumption that the absence of a country of origin label would lead consumers to believe the item was made in the United States. In the Commission's reexamination of its Made in USA policy, the Commission sought comment on whether this presumption continues to be valid. 61 FR 18600 (Apr. 26, 1996). The Commission found that "manufacturing and the sourcing of components have become increasingly global in nature, and that consumers appear to be increasingly aware that goods they buy are produced throughout the world." 62 FR 25020, 25046 (May 7, 1997). The Commission determined that it is no longer appropriate to retain this presumption, and stated that disclosure of foreign origin on unmarked goods is required "only if there is some evidence that, with respect to the particular type of product at issue, a significant

minority of consumers views country of origin as material and believes that the goods in question, when unlabeled, are domestic." 62 FR 25020, 25047.

With respect to watches, the evidence indicates that the country of origin of a watch is still a material claim for many consumers.¹⁰³ However, it is not certain that today a significant number of consumers acting reasonably would believe that a watch *without* country of origin marking is of U.S. origin. Although some watches are assembled in the United States from imported parts, virtually no watches are made in the United States with domestic parts.¹⁰⁴ Consequently, it may not be reasonable for consumers to assume that unmarked watches are domestic, and it may not be deceptive for a seller to fail to mark a watch with its country of origin.¹⁰⁵

Nevertheless, because of Customs regulations, all watches imported into the United States are required to contain marks indicating country of origin. The current Guides require the disclosure of more information than is required by Customs—*i.e.*, the origin of the *parts* of the movement.¹⁰⁶ (Both Customs and the Guides regard the movement as the "guts" of the watch, but Customs does not require disclosure of the origin of

the parts of the movement; rather, it requires disclosure of the country of *assembly* of the movement.¹⁰⁷) However, in the interest of harmonization of foreign origin markings generally and because country of origin of movement *parts* may no longer be material to consumer purchasing decisions, the Commission has tentatively determined that the Watch Guides should not require disclosure of the origin of movement parts.¹⁰⁸

Finally, the Swiss Federation objected to certain markings currently allowed by Customs and by the Guides and submitted survey evidence suggesting that these marks may sometimes be misleading because they imply incorrectly that a watch was encased and inspected in the named country. It recommended that use of the unqualified name of a country and use of the name of a country with the word "Made" be reserved for watches that contain movements manufactured in the specified country and that are completed (*i.e.*, encased and inspected) in the same country. It argued that the origin of a finished watch, rather than the origin of the movement alone, significantly influences consumers' purchasing decisions.¹⁰⁹ The survey evidence it cited showed that U.S. consumers would prefer to buy a watch manufactured in Switzerland, rather

than in France, Hong Kong or Japan.¹¹⁰ It also showed that 14% of the respondents were "very confident" and 39% were "somewhat confident" that if "Swiss" appears on a watch's face, the complete watch was manufactured in Switzerland.¹¹¹

The Swiss Federation also contended that, due to advances in manufacturing technology, widespread use of lower cost quartz movements, and the availability of special features of watches, the movement now represents a significantly lower proportion of the finished watch's value. "In addition, technological advances in the quality and type of movement require greater testing and final inspection after assembly of the movement."¹¹² Moreover, it alleged that special features make encasing and subsequent testing more important, noting, *e.g.*, that the accuracy of a chronometer or a water resistant watch cannot be assured until a watch is encased.¹¹³

However, the Tariff Act only requires that products entering the United States be marked with one country of origin. Moreover, because there is currently an international attempt to harmonize Customs rules of origin, the Commission has tentatively determined not to issue new guidelines that vary from requirements already imposed by Customs for foreign-origin markings.¹¹⁴ As necessary, the Commission can address this issue in the case-by-case context of specific products and claims, weighed against other factors, rather than giving general guidance in the

¹⁰³ A recent survey submitted by the Swiss Federation found that about 49% of the respondents considered the country of origin of a watch either "very important" or "somewhat important." Comment 232, p. 12, Exhibit 4.

¹⁰⁴ Swiss Federation (232) p. 7 n. 4. Several comments addressed the issue of whether watches assembled in U.S. possessions could be marked "Made in USA." Citizen (228) p. 6; Swiss Federation (232) Exhibit 5, pp. 4-5. Section 245.10(a)(4) of the Watch Guides defines "United States" to include the states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. As noted above, the Commission proposes deleting § 245.10 entirely. With respect to "Made in USA" claims, the Commission is examining its standard for such claims, and has proposed guides addressing such claims, in a separate proceeding. (See 62 FR 25020, May 7, 1997). The Commission's proposed Guides for the Use of U.S. Origin Claims apply (with certain, specified exceptions) to all products, including watches, and thus, eliminate the need for the Watch Guides to contain separate admonitions as to the use of "Made in USA." 62 FR 25020, 25047 (May 7, 1997).

¹⁰⁵ Commission cases have long recognized that, for some products, disclosure of foreign origin is not required. *L. Heller & Son, Inc.*, 47 F.T.C. 34 (1950), *aff'd*, 191 F.2d 954 (7th Cir. 1951) (finding that the public interest does not require disclosure of the origin of a foreign product of a type not produced in the United States, such as cultured pearls, natural pearls, or diamonds).

¹⁰⁶ Customs regulations relating to country of origin emanate primarily from section 304 of the Tariff Act of 1930 ("Tariff Act"), as amended, 19 U.S.C. 1304. The Tariff Act of 1930, as amended, and Customs' implementing regulations provide that every article of "foreign origin," or its container, imported into the U.S. must be marked in a conspicuous place with the name of the country of origin of the article.

¹⁰⁷ Three commenters [Citizen (228) p. 2; Swiss Federation (232) p. 17; Timex (239) pp. 5-6] stated that the current Guides' country of origin provisions conflict with Customs' marking requirements and urged that they be harmonized. With the exception of the use of the word "assembled," which Customs does not generally view as sufficient to indicate the country of origin [see HQ 735251 (Oct. 7, 1993), 1993 U.S. CUSTOMS HQ LEXIS 1144], it appears that Customs' and FTC country of origin marking requirements for watches already are *consistent*, albeit not identical. Except for watches that are assembled abroad of U.S. origin parts, Customs has not viewed the term "assembled in" as sufficient to indicate the country of origin. *Id.* Generally, watches can be marked "Made in," "Product of," just with the name of the country of origin, or with the word "Movement" or the abbreviation "MVT" with the name of the country of origin. *Id.*; HQ 734758 (Mar. 1, 1993). However, in the **Federal Register** notice of June 6, 1996, Customs announced that it was modifying 19 CFR 134.43 to provide, in section (e) *Assembled articles*, that, where the country of origin of an article is determined to be the country where the article was finally assembled, the article may be marked as follows: "(1) Assembled in (country of final assembly); (2) Assembled in (country of final assembly) from components of (name of country or countries of origin of all components); or (3) Made in, or product of, (country of final assembly)."

¹⁰⁸ Timex (239) stated, at p. 6, that the "the origin of parts no longer has any meaning to consumers since the introduction of quartz technology and precision timekeeping. Now a \$10 quartz watch will keep as good or better time than the most expensive watch."

¹⁰⁹ Comment 232, p.10.

¹¹⁰ *Id.* at 12, citing Exhibit 4, The Gallup Organization, *Country of Origin as a Consideration in the Purchase of Watches* (July 1992), p.5. The survey was commissioned by the Swiss Federation. It presented a choice among only the four countries named in the text.

¹¹¹ *Id.*, Exhibit 4, pp.3,7.

¹¹² Swiss Federation (232) p.8.

¹¹³ *Id.*

¹¹⁴ On April 7, 1995 at 60 FR 19605, the United States International Trade Commission announced an investigation and a request for public comment entitled "International Harmonization of Customs Rules of Origin." The notice stated, "The investigation is intended to provide the basis for Commission participation in work pertaining to the Uruguay Round Agreement on Rules of Origin (ARO) * * * adopted along with the Agreement Establishing the World Trade Organization (WTO). The ARO is aimed at obtaining the harmonization and clarification of nonpreferential rules of origin for goods in trade on the basis of the substantial transformation test; at achieving discipline in the rules' administration; and at providing a framework for notification, review, consultation, and dispute settlement. These harmonized rules are intended to make country-of-origin determinations impartial, predictable, transparent, consistent, and neutral, and to avoid restrictive or distortive effects on international trade." *Id.* The notice noted that there will be subsequent notices inviting comments on "draft U.S. proposals on the rules, which generally will be issued on a product sector basis * * *." *Id.*

Watch Guides.¹¹⁵ Further, to the extent that competitors believe that the origin of processes other than the ones Customs considers in making its determination are truly important, they can use comparative advertising to tout how their products may be unique; for example, "Entirely Swiss Made," whereas other products have only Swiss-made movements.

The Commission therefore proposes deleting section 245.10 entirely, and seeks comment on this proposal.

L. Proposed Deletion of Sections 245.11-245.16

The JVC omitted from its proposal current sections 245.11 through 245.16. Each of these sections is of general applicability and some of them correspond to a broader, non-industry specific guide or rule.¹¹⁶ For the most part, the comments did not address the deletions proposed by the JVC.

Neither the Watch Council nor AWI specifically addressed any proposed deletions, but both recommended rejecting the JVC's petition and retaining the current Guides.¹¹⁷ Citizen supported the first two parts of a proposal made by AWA to revise section 245.15, discussed below, but otherwise recommended retaining sections 245.11 through 245.16 in their present form.¹¹⁸ AWA supported deleting sections 245.11 through 245.13, because they proscribed practices not particular to the watch industry and barred by statute.¹¹⁹

AWA, however, proposed retaining a revised version of section 245.15, "Guarantees, warranties, etc." AWA recommended that section 245.15 not delineate precise elements of warranty disclosures or warrantors' duties. Instead, it proposed substituting three paragraphs for current section 245.15 that would: (1) prohibit representations that an industry product is covered by a guarantee or warranty unless it is in fact covered by one that fully complies with all applicable state and federal laws; (2) prohibit representations that an industry product is covered by a "full" or "limited" written warranty unless it

is covered by the specified type of warranty that fully complies with the Magnuson-Moss Warranty Act or any successor legislation, as well as with any other applicable state or federal laws; and (3) require an industry member that performs unauthorized alteration or repair services on an industry product to fully and nondeceptively disclose that any damage arising from such unauthorized alteration or repair services may not be covered by any applicable warranty.¹²⁰ AWA argued that the failure of persons repairing or altering a watch from its original condition to notify consumers that damage caused in the process of unauthorized alterations or repairs might not be covered by any applicable warranty "has the potential to mislead consumers."¹²¹ It proposed extending the definition of "industry member" to any person that performs alterations or repair services on industry products, whether or not such alterations or repair services involve the sale of an industry product.¹²²

The Commission believes that AWA's concerns about watch repair and alteration are adequately addressed by revised section 245.8 (now section 245.7), which advises watch sellers against misleading consumers with regard to the coverage of a manufacturer's guarantee or warranty.¹²³ The Commission also has concluded that it is unnecessary to include in the Guides the remaining aspects of AWA's proposal because they address practices not particular to watch industry products. Accordingly, the Commission proposes deleting sections 245.11 through 245.16.

III. Request for Comment

The Commission seeks public comment on the Watch Guides as a whole, and all of the proposed changes discussed above. The Commission also requests comment on the following specific questions:

1. Is there a continuing need for Guides for the Watch Industry?
 - (a) What benefits would the proposed revised Guides for the Watch Industry provide to purchasers?
 - (b) Would the proposed revised Guides impose costs on purchasers?
 - (c) Do international standards provide sufficient guidance to the watch industry?
 - (d) Are industry self-regulation and "market mechanisms," such as manufacturer reputation or

manufacturer warranties, sufficient to protect consumers from misrepresentations regarding watches?

2. What changes, if any, should be made to the proposed revised Guides to increase the benefits of the Guides to purchasers?

(a) How would these changes affect the costs the proposed revised Guides may impose on firms subject to their admonitions?

3. What significant burdens or costs, including costs of compliance, would the proposed revised Guides impose on firms subject to their admonitions?

(a) Would the proposed revised Guides provide benefits to such firms?

4. What changes, if any, should be made to the proposed revised Guides to reduce the burdens or costs imposed on firms subject to their admonitions?

(a) How would these changes affect the benefits provided by the Guides?

5. Do the proposed revised Guides overlap or conflict with other federal, state, or local laws or regulations?

6. Since comment was sought on the existing Watch Guides in 1992, what effects, if any, have changes in relevant technology or economic conditions had on the provisions of the Guides?

7. Should detachable accessories to watchcases be covered by the Watch Guides? If so, why?

8. Should the Guides advise that watchcases be marked to indicate their metallic content? If so, why?

9. Should the provisions specifying a minimum thickness for "rolled gold" be changed to conform with ISO standard 3160-1?

10. Is the tolerance for plating thickness, in paragraph 1 of the Appendix, necessary? If so, why?

11. Should the Guides admonish against the disclosure of karat fineness for gold electroplated products in accordance with ISO standard 3160-1?

12. Should the Guides advise the disclosure of the actual thickness and karat fineness of gold electroplate? Is a disclosure of the "nominal thickness" of the electroplate, as required by ISO standard 3160-1, preferable?

13. Is the proposed safe harbor for gold electroplate representations (1 micron of 23K gold) preferable to ISO standard 3160-1 (5 microns of 14K gold)? If so, does 1 micron of 23 karat gold provide a durable coating, sufficient to render lasting and effective service?

14. Should the term "gold plate" be used to describe a watchcase with a gold coating, regardless of the method of application of the coating? For gold plated items, should the Guides advise the disclosure of the actual thickness and karat fineness of the plating? Is a

¹¹⁵ Section 245.2 of the Guides will continue to advise that misrepresentation of country of origin is unfair and deceptive.

¹¹⁶ Section 245.11 addresses deceptive pricing. Section 245.12 covers commercial bribery, which is addressed by the Robinson-Patman Act. Section 245.13 covers "Coercing purchase of one product as a prerequisite to the purchase of other products." Section 245.14 addresses "Misrepresentation of the character and size of business, extent of testing, etc." Section 245.15 covers "Guarantees, warranties, etc." Section 245.16 governs "Use of the word 'free'."

¹¹⁷ USWC (118) p.1; AWI (116) p.1.

¹¹⁸ Comment 228, p.5.

¹¹⁹ Comment 236, p.3.

¹²⁰ *Id.* at 3-4.

¹²¹ *Id.* at 3.

¹²² *Id.*

¹²³ See discussion above.

disclosure of the "nominal thickness" of the plating, as required by ISO standard 3160-1, preferable?

15. Is proposed section 245.3(d) adequate to prevent the deceptive marking of a watchcase composed of more than one metal?

16. Should the Commission add a Note to the Guides which states that "Representations that a watch is a chronometer are not considered unfair or deceptive if the watch meets the definition of chronometer in ISO standard 3159?"

17. Should the Commission add a Note to the Guides which states that "Representations that a watch is a diver's watch are not considered unfair or deceptive if the watch meets the definition of a diver's watch in ISO standard 6425?"

18. Is section 245.5(a)'s admonition against the use of the terms "shockproof," "waterproof," "nonmagnetic," or "all proof" justified? Explain.

19. Should the Guides advise the disclosure of the care requirements for protective features of a watch? If so, how should that disclosure be made?

20. Should the Guides advise the manner in which the disclosure that a product or its parts are not new, or are used, secondhand, rebuilt, repaired or refurbished, be made? If so, how should the disclosure be made?

21. Should the Guides admonish against misleading consumers into believing that a watch which has been altered, repaired, rebuilt or refurbished, is covered by the manufacturer's guarantee or warranty, when the seller knows or has reason to know that the watch is not guaranteed?

22. Should the Guides continue to advise industry members that it is unfair or deceptive to imitate, simulate or counterfeit the trade names or trademarks of competitors, or to obliterate, conceal, or remove tags, labels, marks, or other disclosures placed on an industry product under circumstances likely to mislead the ultimate consumer?

23. With respect to imported watches, should the Guides continue to advise industry members to disclose the origin of the parts of the watch movement (in addition to the U.S. Customs Service requirement that the origin of the assembly of the movement be disclosed)? Is such a disclosure of material importance to consumers?

List of Subjects in 16 CFR Part 245

Advertising; Trade Practices; Watch Bands; and Watches.

The Commission proposes to amend Chapter I of Title 16 of the Code of Federal Regulations by revising: Part 245 to read as follows:

PART 245—GUIDES FOR THE WATCH INDUSTRY

Sec.

245.0 Scope and application.

245.1 Definitions.

245.2 Misrepresentation in general.

245.3 Misrepresentation of metallic composition of watchcases.

245.4 Misrepresentation as to durability or suitability.

245.5 Misrepresentation of protective features.

245.6 Deception as to movements.

245.7 Deceptive selling of used, rebuilt, or secondhand products.

Appendix A to Part 245—Thickness Tolerance and Tests

Authority: 15 U.S.C. 45, 46.

§ 245.0 Scope, application, and purpose.

(a) Statement of purpose. The guides in this part represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. The guides in this part specifically address the application of section 5 of the FTC Act (15 U.S.C. 45) to the advertising and marketing of watches. They provide the basis for voluntary compliance with such laws by members of industry. Conduct inconsistent with the positions articulated in the guides in this part may result in corrective action by the Commission under section 5 if, after investigation, the Commission has reason to believe that the behavior falls within the scope of conduct declared unlawful by the statute.

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

(c) The guides in this part apply to claims and representations about industry products included in labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, illustrations, depictions, product brand or trade names, visual representations, pictures, televised or computer images, diagrams, or other depictions, or through any other means.

§ 245.1 Definitions.

For the purpose of this part the following definitions apply:

(a) The term *watch* means a timepiece or time-keeping device for measuring or indicating time which is designed to be worn on or about the person.

(b) The term *watchcase* or *case* means any metal case, covering, or housing of any quality or description for a watch as defined above and includes the back, center, lugs, bezel, pendant, crown, bow, cap, and other parts thereof, including a watch band or other accessory which has been permanently affixed thereto; and unless otherwise stated, either term as used in these guides applies to the case whether marketed separately or together with the movement or works.

Note: The Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR Part 23, address detachable metallic watch bands and other detachable accessories.

(c) The term *movement* means that part of a watch which produces and maintains a recurring phenomenon and is capable of counting time. The movement is connected to a means of displaying time by either a dial and hands (analog) or a digital display, and is mounted in a case.

(1) *Mechanical movement* means a movement which divides time into equal parts using a balance wheel or any other mechanical means of determining intervals of time that uses power generated by a mainspring which may be wound by hand or automatically.

(2) *Quartz movement* means a movement which divides time into equal parts using a synthetic quartz crystal that vibrates using power generated by electrical energy.

(d) The term *mark* means any letter, figure, numeral, symbol, sign, word, or term, or any combination thereof, which has been stamped, embossed, inscribed, or otherwise placed, on any industry product for the purpose of disclosing its metallic composition or any other material information.

(e) The term *industry product* means a watch or watchcase, or a part thereof, as defined in paragraphs (a), (b) and (c) of this section.

§ 245.2 Misrepresentation in general.

It is unfair or deceptive to misrepresent the grade, quality, estimated life, appearance, substance, size, construction, novelty, composition, accuracy, dependability, imperviousness, repairability, conformance to standards, methods of manufacture, country of origin, or any other material aspect of an industry product or part.

§ 245.3 Misrepresentation of metallic composition of watchcases.

(a) It is unfair or deceptive to misrepresent the metallic composition of a watchcase.

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

(7) 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, which is composed throughout of an alloy of gold of less than 10 karat fineness.

(8) Use of the words "silver," "sterling," or "sterling silver," or any abbreviation, to describe all or part of an industry product, which is not composed throughout of at least 925/1000ths pure silver. Use of the word "coin silver" to describe all or part of an industry product, which is not composed throughout of at least 900/1000ths pure silver.

(9) Use of the words "silver," "sterling," "sterling silver," or "coin silver" or any abbreviation, to describe all or part of an industry product, which is not composed throughout of silver, but is surface-plated or coated with silver, unless the word "silver," or its abbreviation, is adequately qualified to indicate that the product or part is only surface-plated.

(c) The following are examples of markings and descriptions that are not considered unfair or deceptive.

(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," and "14 K. Gold," and "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.," and "14 K.").

(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, may be marked or described as "Gold Plate" or "Gold Plated," or adequate abbreviation thereof, (as, for example, G.P.), if such products either could be marked as "gold electroplate" under paragraph (c)(5) of this section, or are plated to a thickness throughout which is equivalent to at least five microns (approximately 200 millionths of an inch) of 14 karat gold after completion of all finishing operations, provided that a mark indicating the karat fineness and the actual thickness of the gold plate in microns, is disclosed in close proximity to and equally conspicuously as the mark identifying the watchcase as "gold plate" or "gold plated" (for example, "5 microns 14 K. gold plate," or "5μ 14 K. G.P." for an item plated with 5 microns of 14 karat gold.)

(3) An industry product or part thereof, on which there has been affixed

on all significant surfaces by mechanical means, a plating of gold or gold alloy of not less than 10 karat fineness, may be marked or described as "Gold Filled," or adequate abbreviation, when the plating is of a thickness throughout of not less than 75 microns (approximately three one-thousands of an inch) after completion of all finishing operations, and when the term or abbreviation is immediately preceded by a designation of the karat fineness of the gold alloy of which the plating is composed, which is of equal conspicuousness as the term used (for example, "12 Karat Gold Filled," "12 K.G.F.").

(4) An industry product or part thereof, on which there has been affixed on all significant surfaces by mechanical means, a plating of gold or of a gold alloy of not less than 10 karat fineness, may be marked or described as "rolled gold plate," or an abbreviation, when the plating has a thickness throughout of not less than 37.5 microns (approximately one and one-half one thousands of an inch) after completion of all finishing operations, and when the term or abbreviation is immediately preceded by a designation of the karat fineness of the gold alloy of which the plating is composed, which is of equal conspicuousness as the term used (for example, "10 Karat Rolled Gold Plate," "10 K. R.G.P.").

(5) An industry product or part thereof, on which there has been affixed on all significant surfaces by an electrolytic process, an electroplating of gold, or of a gold alloy of not less than 10 karat fineness, which has a minimum thickness throughout which is equivalent to at least 1 micron (approximately 40 millionths of an inch) of 23 karat gold after completion of all finishing operations, may be marked "gold electroplate," provided that the karat fineness and the actual minimum thickness of the gold electroplate is disclosed in microns in close proximity to and equally conspicuously as the mark identifying the watchcase as "gold electroplate." If the thickness of such gold electroplate is 37.5 microns (approximately one and one-half one thousandths of an inch) or greater, it may be described as "heavy gold electroplate." The terms "gold electroplate" and "heavy gold electroplate" may be immediately preceded by a correct designation of the karat fineness of the gold alloy of which such coating is composed.

Note: A watch case which has been electroplated with 5 microns of 14 karat gold meets the requirements of this section and may be marked gold 33332electroplate, provided

that the karat fineness and the actual thickness of the gold electroplate is disclosed in microns in close proximity to and equally conspicuously as the mark identifying the watchcase as "gold electroplate."

(6) An industry product or part thereof, which is composed throughout of at least 925/1000ths pure silver, may be described as "silver," "sterling," or "sterling silver," or any abbreviation. An industry product or part thereof which is composed throughout of at least 900/1000ths pure silver, may be described as "coin silver."

(7) An industry product or part thereof, which has been plated with silver may be marked as "silver plate" or "silver plated," if, after the completion of all finishing operations, all significant surfaces of the product or part contain a plating or coating of silver which is of substantial thickness,¹ which will withstand normal use and last throughout the estimated life of the product.

Note to paragraph (c)(7): The National Stamping Act provides that silverplated articles shall not "be stamped, branded, engraved or imprinted with the word 'sterling' or the word 'coin,' either alone or in conjunction with other words or marks." 15 U.S.C. 297(a).

(8) An industry product or part thereof, which is composed in whole or in part of a precious metal other than gold or silver, or of an alloy of such a metal, or which has been plated by any method with such a metal or alloy thereof, may be marked so as to disclose the kind of precious metal or alloy used and the manner of its use.

(9) An industry product or part thereof, which does not fall within the descriptions provided in paragraphs (c) (1) through (7) of this section, may be marked as "Base Metal" or so as to identify clearly the kind or kinds of metal of which it is composed, e.g., "Aluminum," "Stainless Steel," "Chromium Plated Steel."

(d) If a watchcase is composed of parts having different metallic compositions, and has exposed surfaces that are or have the appearance of being metal, a mark placed on the product that indicates the metallic content of the product should be closely accompanied by an identification of the part or parts to which the mark is applicable (e.g., "Base Metal Back," "14K Gold Filled Bezel").

¹ 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 which 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.

(e) In determining the metallic composition of watchcases, parts which are necessarily required to be of steel or some other base metal may be excluded, namely, the springs, hinge pins for jointed cases, spring pins for straps or bands, separate inside movement holding rings, and crown cores.

(f) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances under the National Stamping Act (15 U.S.C. 294, *et seq.*), or any amendment thereof. For plated items, refer to the permissible tolerances set forth in paragraph 1 of Appendix A to this part.

§ 245.4 Misrepresentation as to durability or suitability.

It is unfair or deceptive to misrepresent the ability of a product to resist or withstand damage from stated causes, or of its suitability for particular uses. Illustratively, it is unfair or deceptive to falsely designate or describe a watch as a chronometer or use such terms as "skin divers," "navigators," or "railroad" to describe industry products which do not possess the characteristics, e.g., ruggedness, accuracy, dependability, or other features, required of watches used by persons engaged in those activities.

Note: Representing that a watch is a chronometer would not be considered unfair or deceptive, if the watch meets the definition of "chronometer" in ISO standard 3159 (Timekeeping instruments—Wrist-chronometers with spring balance oscillator).

Note: Representing that a watch is a diver's watch would not be considered unfair or deceptive, if the watch meets the definition of a "diver's watch" in ISO standard 6425 (Divers' Watches).

§ 245.5 Misrepresentation of protective features.

(a) It is unfair or deceptive to misrepresent the ability of an industry product to withstand or resist damage or other harmful effects from stated causes. Illustratively, it is unfair and deceptive to describe an industry product as "shockproof," "waterproof," "nonmagnetic," or "all proof," even if such term or terms are qualified by words or phrases, e.g., "waterproof when case, crown, and crystal are intact."

(b) The following are examples of markings and descriptions that are not considered unfair or deceptive:

(1) Use of the term "shock resistant" or "shock absorbing" to describe an industry product, if the person making that claim has a reasonable basis for concluding that the product possesses a level of resistance to damage from shock, sufficient to insure that it will

successfully withstand being dropped from a height of 3 feet onto a horizontal hardwood surface. Satisfying ISO Standard 1413-1984(E)² or passing the test described in paragraph 2 of the appendix provides such a reasonable basis.

(2) Use of the term "water resistant" to describe an industry product, if the person making that claim has a reasonable basis for concluding that it is sufficiently impervious to water or moisture so as to insure that at the time of its sale to the ultimate consumer it will successfully withstand being immersed in water during such activities as bathing, showering, and swimming. Satisfying ISO Standard 2281-1990(E) or passing the test described in paragraph 3 of Appendix A to this part provides such a reasonable basis.

(3) Use of the term "antimagnetic" to describe an industry product, if the person making that claim has a reasonable basis for concluding that it is so designed and constructed as to provide a substantial degree of protection against magnetism after sale to the ultimate consumer, and the product will successfully withstand accidental exposure to unusually strong magnetic or electrical fields. Satisfying ISO Standard 764-1984(E) or passing the test described in paragraph 4 of Appendix A to this part provides such a reasonable basis.

§ 245.6 Deception as to movements.

(a) It is unfair or deceptive to misrepresent the number of jewels contained in a watch, or that a watch is "jeweled" or contains a jeweled movement.

(b) The following are examples of markings and descriptions that are not considered unfair or deceptive:

(1) Describing a watch as "jeweled" or as containing a jeweled movement if the movement contains at least seven jewels each of which serves the purpose of protecting against wear from friction by providing a mechanical contact with a moving part at a point of wear.

(2) Describing a watch as containing a certain number of jewels if each of these jewels serves the purpose of protecting against wear from friction by providing a mechanical contact with a moving part at a point of wear.

(c) It is unfair or deceptive to represent that a watch is a "quartz

² ISO standards are available from: American National Standards Institute, Customer Service, 11 W. 42nd Street, 13th Floor, New York, NY 10036-8002, Telephone (212) 642-4900; FAX (212) 302-1286.

watch" or contains a quartz movement if such is not the case.

(d) A watch may be described as a "quartz watch" or as containing a quartz movement if a silicon dioxide ("quartz") crystal contained in the watch serves the purpose of dividing time and regulating the time display by means of vibrations of such crystal caused by its placement into an electric field.

§ 245.7 Deceptive selling of used, rebuilt, or secondhand products.

(a) It is unfair or deceptive to sell or offer for sale an industry product which in whole or in part is, or which contains parts that are, used, secondhand, rebuilt, repaired or refinished, unless a disclosure is made that such product or parts are not new, or are used, secondhand, rebuilt, repaired, or refinished.

(b) It is unfair or deceptive to represent that a watch which has been used, rebuilt, repaired, or refinished is covered by the manufacturer's guarantee or warranty, when such is not the case.

Appendix A to Part 245—Thickness Tolerances and Tests

Set forth in this Appendix are the thickness tolerances and tests referred to in this part.

1. *Thickness tolerances: plated and electroplated cases.* The minimum thickness specified in § 245.3(c) (2), (3), (4), and (5) for the coatings of gold or gold alloy on watchcases shall mean that the coating of precious metal affixed to the surface of the metal stock shall be throughout the surface and at the thinnest point not less than the thickness specified after the completion of all finishing operations, including polishing, except, however, for such deviations therefrom, not exceeding 20

percent (minus) of the stated thickness, as may be proved by the manufacturer to have resulted from unavoidable variations in manufacturing processes and despite the exercise of due care, which deviation so proved should be allowed if and when the quantity of precious metal remaining plated on the outside of the case is sufficient to equal the quantity necessary to provide the specified minimum thickness at all points on such watchcase including the thinnest point.

2. *Test for shock resistance.* A watch should be tested for shock resistance in a room having a temperature between 18 and 25 degrees Centigrade which does not vary by more than two degrees during the test. A wrist watch which does not have a permanently affixed band should be tested without the band or strap. The test should be conducted as follows:

a. One hour after a mechanical watch has been fully wound or two hours after a quartz watch has been allowed to function, its daily rate in each of the following three positions should be determined by observing it for two minutes in each position:

(1) Position HB (horizontal with dial facing down);

(2) Position VC (vertical with three o'clock to the watch's left);

(3) Position VB (vertical with three o'clock pointed downwards).

b. Shocks equal to that which the watch would receive if it were dropped from a height of three feet onto a horizontal hardwood surface should be applied as follows:

(1) The first shock should be applied to the middle of the watch at a position directly opposite the crown and in a direction which is parallel to the plane of the watch;

(2) The second shock should be applied to the crystal, and in a direction which is perpendicular to the plane of the watch.

c. (1) Five minutes after the last shock, the daily rate of the watch in each of the three positions described in paragraph 2. a. of this

appendix above should be determined by observing it for two minutes in each position. The differences in daily rate before and after the shock should be determined for each position. The residual effect of the shocks will be equal to the greatest of these differences.

(2) A watch will be considered to have passed the foregoing test, if after application of the shocks, it does not stop; the residual effect does not exceed 2 seconds per day for quartz watches and 60 seconds per day for all other types of watches; and an examination of the watch does not disclose any physical damage which would affect its operation or appearance, e.g., hands bent or out of position, cracked crystal, or automatic or calendar devices inoperable or out of alignment.

3. *Test for water resistance.* A watch should be tested for water resistance by immersing it completely for at least five minutes in water under atmospheric pressure of 15 pounds per square inch and for at least another five minutes in water under an additional pressure of at least 35 pounds per square inch (total pressure of 50 pounds per square inch). If the watch does not admit any water or moisture it will be considered to have passed the test.

4. *Test for anti-magnetic qualities.* A watch should be tested for its resistance to magnetism by placing it in a demagnetized condition in an electrical field of not less than 60 Gauss for at least five seconds in a vertical position and for at least five seconds in a horizontal position. If the daily rate of a quartz watch has not been changed by more than 1.5 seconds as a result of the foregoing exposure, or the daily rate of all other types of watches has not been changed by more than 15 seconds as a result of the foregoing exposure, it shall be considered to have passed the test.

By direction of the Commission.

Donald S. Clark,
Secretary.

Note: This appendix will not appear in the Code of Federal Regulations.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS

Abbreviation	No.	Commenter
ArtCarved	155	ArtCarved.
AWA	236	American Watch Association.
AWI	116	American Watchmakers Institute.
Bales	156	Bales Diamond Center & Mfg. Inc.
Bedford	210	Bedford Jewelers, Inc.
Benrus	22	Benrus Watch Co. Inc.
Best	225	Best Products Co., Inc.
Bridge	163	Ben Bridge.
Canada	209	Consumer & Corporate Affairs Canada.
Citizen	228	Citizen Watch Co. of America, Inc.
Estate	23	Estate Jewelers.
Fasnacht	4	Fasnacht's Jewelers.
G&B	30	Gudmundson & Buyck Jewelers.
Gold Institute	13	Gold Institute.
Handy	62	Handy & Harman.
IJA	192	Indiana Jewelers Association.
ISA	237-237A	International Society of Appraisers.
Jabel	47	Jabel Inc.
JCWA or Japan Watch	216	Japan Clock & Watch Association.
JMC	1	Jewelry Merchandising Consultants.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
Lannyte	65	Lannyte Co.
LaPrad	181	Robert E. LaPrad.
Leach	257	Leach & Garner.
Matthey	213	Johnson Matthey.
McGee	112	McGee & Co.
MJSA	226	Manufacturing Jewelers & Silversmiths of America, Inc.
NACSM	219	National Association of Catalog Showroom Merchandisers, Inc.
NAW	251	North American Watch Corp.
Newhouse	76	Leon M. Newhouse.
Nowlin	109	Nowlin Jewelry, Inc.
Phillips	204	Phillips Jewelers, Inc.
Sheaffer	249	Sheaffer Inc.
Skalet	61	Skalet Inc.
Sibbing's	5	Sibbing's Jewelry.
Solid Gold	261	Solid Gold Jewelers.
Swiss Federation	232	The Federation of the Swiss Watch Industry.
Timex	239	Timex Corp.
USWC	118	U.S. Watch Council Inc.

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