

Cahokia/St. Louis, IL, St. Louis  
Downtown—Parks, NDB RWY 30L,  
Amdt 1  
Cahokia/St. Louis, IL, St. Louis  
Downtown—Parks, GPS RWY 30L,  
Orig  
Bangor, ME, Bangor Intl, GPS RWY 15,  
Orig  
Bangor, ME, Bangor Intl, GPS RWY 33,  
Orig  
Pascagoula, MS, Trent Lott Intl, GPS  
RWY 35, Orig  
Colstrip, MT, Colstrip, GPS RWY 6, Orig  
Colstrip, MT, Colstrip, GPS RWY 24,  
Orig  
Lakewood, NJ, Lakewood, GPS RWY 6,  
Orig  
Lakewood, NJ, Lakewood, GPS RWY 24,  
Orig  
Greensboro, NC, Piedmont Triad  
International, VOR/DME OR GPS  
RWY 32, Amdt 3A, CANCELLED  
Greensboro, NC, Piedmont Triad  
International, GPS RWY 32, Orig  
Washington, NC, Warren Field, GPS  
RWY 5, Orig  
Wilmington, NC, Wilmington Intl, GPS  
RWY 6, Amdt 1  
Wilmington, NC, Wilmington Intl, GPS  
RWY 24, Amdt 1  
Dublin, VA, New River Valley, GPS  
RWY 24, Orig  
Manitowoc, WI, Manitowoc County,  
VOR OR GPS RWY 35, Amdt 14

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## FEDERAL TRADE COMMISSION

### 16 CFR Part 245

#### Guides for the Watch Industry

**AGENCY:** Federal Trade Commission.

**ACTION:** Rescission of the Guides for the Watch Industry.

**SUMMARY:** On June 18, 1997, the Federal Trade Commission ("Commission") published a **Federal Register** Notice seeking public comment on proposed changes to the Guides for the Watch Industry ("Watch Guides" or "Guides") and on the continuing need for the Guides. The Commission has now completed its review and has decided to rescind the Guides. The Commission has concluded that the Guides are no longer needed to resolve uncertainty among businesses over what claims are likely to be considered deceptive, and that in most instances, international standards provide sufficient guidance to industry regarding watch markings and claims.

**EFFECTIVE DATE:** June 9, 1999.

**ADDRESSES:** Requests for copies of this **Federal Register** document should be

sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. This document also is available on the Internet at the Commission's website, <<http://www.ftc.gov>>.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The Commission announces that it is rescinding the Guides for the Watch Industry, 16 CFR part 245. The Watch Guides address claims for the advertising, marking, and sale of watches, watchcases, watch accessories, and watch bands that are permanently attached to watchcases. The Guides specifically address representations and markings regarding a watch's metallic composition, protective and other special features, movement, and country of origin.

In 1992, the Commission solicited public comment on the Watch Guides and the then-Guides for the Jewelry Industry and Guides for the Metallic Watch Band Industry.<sup>1</sup> After review, the Commission tentatively decided to make numerous changes to the Watch Guides that were not discussed in the original **Federal Register** Notice. The Commission, therefore, solicited further comment regarding these proposed changes, as well as its proposal to delete 9 of the 16 sections in their entirety.<sup>2</sup> The Commission also solicited comment on whether there was a continuing need for the Watch Guides. In particular, the Commission requested comment on whether international standards provide sufficient guidance to industry and whether industry self-regulation and "market mechanisms," such as

<sup>1</sup> 57 FR 24996 (June 12, 1992). The Commission revised the Guides for the Jewelry Industry (renamed Guides for the Jewelry, Precious Metals and Pewter Industries) and rescinded the Guides for the Metallic Watch Band Industry. 61 FR 27178 and 27228 (May 30, 1996).

<sup>2</sup> 62 FR 33316 (June 18, 1997). Comments submitted in response to the earlier Notice stated that certain provisions of the Guides, such as those dealing with gold-plated, water-resistant and shock-resistant watches, were outdated or inconsistent with international standards. Some comments also noted that the Guides failed to address quartz watches. In addition to proposing changes to the Guides, the Commission proposed deleting sections that were the subject of broader, non-industry specific guidance (e.g., guidance regarding use of the word "free"), that were covered by other parts of the Guides (e.g., admonishing against misrepresentations of watch accessories), or that were no longer necessary (e.g., advising the disclosure of foreign origin).

manufacturer reputation or warranties, are sufficient to protect consumers from misrepresentations about watches.<sup>3</sup> The Commission requested this information to determine whether the Watch Guides should be revised and retained or whether they should be rescinded.

The Commission received eleven comments in response to this second **Federal Register** Notice.<sup>4</sup> The comments favored retaining the Watch Guides, albeit with significant changes.<sup>5</sup> After carefully reviewing the comments and the Guides, however, the Commission has concluded that there is no continuing need for the Watch Guides. Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(a)(1), prohibits "unfair or deceptive acts or practices in or affecting commerce." The purpose of guides is to assist industry members in complying with the Act. Guides are particularly useful if they resolve uncertainty among businesses over what claims are likely to be considered deceptive. The current Watch Guides, however, are in many instances out of date, inconsistent with international standards, or unnecessary. Rather than extensively redrafting the Guides, the Commission has decided that international standards provide guidance to sellers regarding certain acceptable claims and markings. For those claims not addressed by international standards, there does not appear to be any demonstrated uncertainty over what the Commission is likely to consider deceptive. Thus, the Commission has determined to rescind the Watch Guides. In the following sections of this Notice, the Commission summarizes the key points raised by the

<sup>3</sup> *Id.*

<sup>4</sup> In the remainder of this Notice, the comments are cited to by an abbreviation of the comment name, the comment number, and the relevant pages of the comment. The following is a list of the comment name, abbreviation and comment number used to identify each commenter. Japan Clock & Watch Association ("JCWA") #1; European Union Delegation of the Permanent European Horological Committee ("EU") #2; United States Watch Council, Inc. ("USWC") #3; Leon M. Newhouse ("Newhouse") #4; Federation of the Swiss Watch Industry ("Swiss") #5; Seiko Corporation of America ("Seiko") #6; Bell & Ross ("Bell") #7; American Watch Association ("AWA") #8; U.S. Watch Producers in the US Virgin Islands ("USVI") #9; Kenneth E. Mapp, Lieutenant Governor, The United States Virgin Islands ("Mapp") #10; Timex Corporation ("Timex") #11.

<sup>5</sup> JCWA (1) p.3; EU (2) p.1; USWC (3) p.1; Swiss (5) pp.3-4; Seiko (6) p.1; AWA (8) p.1; USVI (9) p.1; Timex (11) p.2. Although Newhouse (4), Bell (7) and Mapp (10) did not expressly state that they favored retention of the Guides, they recommended changes or additions to the Guides and, therefore, also are considered to favor retention. Timex (11) p.2, stated that there is a continuing need for the Guides "only if, to the extent the Guides set standards, those standards will be enforced."

comments and discusses its decision to rescind the Guides.

## II. Summary of the Comments

### A. Need for the Watch Guides

The comments favored retention of the Guides, stating that they benefit both watch manufacturers and consumers. AWA stated that the Guides "have served a valuable purpose in assisting industry members in understanding the standards for appropriate marking and labeling of watch products and in avoiding practices that could confuse or deceive consumers."<sup>6</sup> This sentiment was echoed in many comments.<sup>7</sup> In addition, the comments indicated that the Guides are a useful source of information for consumers.<sup>8</sup>

### B. Adequacy of Self-Regulation and International Standards

The comments stated that industry self-regulation and market mechanisms, such as manufacturer reputation or warranties, were insufficient to protect consumers from misrepresentations about watches.<sup>9</sup> Timex noted that "it often will not be cost effective for industry members to take action against others who make false or misleading claims."<sup>10</sup>

The comments also stated that international standards were not an adequate substitute for the Guides. The international standards applicable to

watches are developed by the International Organization for Standardization ("ISO"), "a worldwide federation of national standards bodies from some 130 countries."<sup>11</sup> "The ISO International Standards relating to clocks and watches are discussed and determined by eight positive participant countries (i.e., Germany, China, France, India, Japan, Mexico, Russia and Switzerland) and 20 observer countries including the U.S.A. These International Standards are regularly reviewed every 5 years to prevent their becoming obsolete."<sup>12</sup> ISO has issued standards relating to, among other things, gold alloy coverings on watchcases and accessories,<sup>13</sup> antimagnetic watches,<sup>14</sup> shock-resistant watches,<sup>15</sup> water-resistant watches,<sup>16</sup> divers' watches,<sup>17</sup> chronometers,<sup>18</sup> and functional jewels.<sup>19</sup>

The comments do not consider the ISO standards to be sufficient to protect consumers primarily because the ISO standards are not enforceable in the United States.<sup>20</sup> ISO does not regulate the international watch industry. Instead, each participating member country enforces the ISO standards in accordance with their own laws.<sup>21</sup> Because the United States is not an adherent to the ISO standards, the comments stated that ISO standards are not enforceable in the United States.<sup>22</sup>

Some comments also stated that the guidance provided in the Watch Guides was preferable to the ISO standards. Swiss stated that the Watch Guides are more comprehensive than the ISO standards because the Guides provide definitions of products, and address, among other things, misrepresentations in general, counterfeiting of trademarks, and marking of watches that contain more than one metal.<sup>23</sup> Swiss also noted that the United States is not a participant in ISO, and therefore, is not involved in the formulation of ISO

watch standards.<sup>24</sup> In addition, Timex stated that the ISO standards are sometimes inconsistent with existing U.S. practice.<sup>25</sup> For example, an ISO standard states that a watch may be described as a chronometer if it is "certified by a neutral, official authority, which checks the watch, or if necessary the movement, and issues an official certificate of compliance."<sup>26</sup> Timex stated that there is no evidence that consumers believe that chronometers are tested and certified and that current U.S. practices "do not mandate that only "certified" watches be described as chronometers."<sup>27</sup> Thus, the comments argued that the Commission should retain the Watch Guides.<sup>28</sup>

### C. Harmonization of the Watch Guides With International Standards

Although not necessarily viewed as a substitute for the Guides, harmonizing the Watch Guides with the ISO standards was supported by many comments.<sup>29</sup> The comments contended that harmonization with ISO standards was appropriate because the ISO standards were adopted "after extensive consideration by technical experts" from the major watch producing countries of the world.<sup>30</sup> In addition, JCWA added that the standards "reflect the actual states and the current technical level of watches . . . (and) fully take into consideration the viewpoint of consumer protection."<sup>31</sup> Further, the comments noted that ISO standards are reviewed every five years, ensuring that the standards do not become obsolete.<sup>32</sup>

<sup>24</sup> *Id.* at 7; see also USWC (3) p.1 (stating that international standards are "written by the Swiss in their best interest," and thus, do not provide adequate guidance).

<sup>25</sup> Timex (11) p.3.

<sup>26</sup> ISO 3159.

<sup>27</sup> Timex (11) p.3. Timex notes, however, that chronometers are defined as "an instrument for measuring time . . . esp. one intended to keep time with great accuracy." Timex (11) p.3, citing Webster's Seventh New Collegiate Dictionary. Consumers, therefore, may expect watches described as chronometers to have certain features, such as accuracy. See Swiss (5) p.23. As is required for all objective claims about products, sellers must have substantiation for a claim that a watch is a "chronometer." Although certification by a neutral, official authority, as required by the ISO standard, may provide such substantiation, it is not necessarily the only means of substantiating such a claim.

<sup>28</sup> Swiss (5) p.4; AWA (8) p.1; Timex (11) p.3.

<sup>29</sup> JCWA (1) pp.2, 4; EU (2) p.2; Swiss (5) pp.10-11; Seiko (6) p.1; AWA (8) Letter, p.1. *But see* Timex (11) pp.3, 8 (stating that the ISO standard for "rolled gold" claims allows watches to have a significantly lesser thickness of gold than currently advised by the Guides and noting the possible need to advise sellers to state the thickness of the gold).

<sup>30</sup> Swiss (5) p.11.

<sup>31</sup> JCWA (1) p.3.

<sup>32</sup> JCWA (1) p.2; Swiss (5) p.11.

<sup>6</sup> AWA (8) p.1.

<sup>7</sup> See, e.g., JCWA (1) p.3 (providing guidance as to proper markings serves the purpose of preventing unfair or deceptive markings and benefits both manufacturers and consumers); Swiss (5) pp.3, 5 (the Guides "assist watch manufacturers in determining what representations can be made concerning the performance and qualities of watches" and also "supply a common technical benchmark upon which consumers can rely"); USVI (9) p.1 (the Guides "serve a valuable purpose in assisting domestic as well as foreign producers in understanding the applicable standards for marking and labeling watches and in avoiding practices that could result in consumer confusion or deception"); Timex (11) p.4 ("by specifying 'safe harbors' the Guides provide industry members with means to ensure that they will not be charged with unfair or deceptive trade practices as a result of making certain claims—a certainty that is of value to those making such claims").

<sup>8</sup> EU (2) p.1 (stating that the Guides "define terms and technical features that are necessary for the consumer understanding"); USWC (3) p.1 (stating that the Guides "serve as a consistent guide for comparison-shopping"); Swiss (5) p.5 (stating that the Guides "help consumers obtain the information they need to make informed purchasing decisions" and provide definite standards that consumers can cite to when seeking redress for any misrepresentations).

<sup>9</sup> See, e.g., AWA (8) p.1. Swiss also stated that without the Guides, each manufacturer will "interpret for itself what any given attribute for a watch should mean." Swiss (5) p.8. Consumers will not have the ability to distinguish between competing claims or determine which claims are accurate. *Id.*

<sup>10</sup> Timex (11) p.3.

<sup>11</sup> For information about ISO, see <<http://www.iso.ch/infoc/intro.htm>>. 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.

<sup>12</sup> JCWA (1) p.2.

<sup>13</sup> ISO 3160-1:1998; ISO 3160-2:1992; and ISO 3160-3:1993.

<sup>14</sup> ISO 764:1984.

<sup>15</sup> ISO 1413:1984.

<sup>16</sup> ISO 2281:1990.

<sup>17</sup> ISO 6425:1996.

<sup>18</sup> ISO 3159:1976.

<sup>19</sup> ISO 1112:1974.

<sup>20</sup> EU (2) p.1 ("International Standards are a good reference for the manufacturers, but as they are not compulsory, they sometimes are not sufficient to protect the consumer"); Swiss (5) pp.8, 9; AWA (8) p.1.

<sup>21</sup> Swiss (5) p.9.

<sup>22</sup> *Id.* at 4-5, 8, 9.

<sup>23</sup> *Id.* at 6-7.

The comments further argued that differences between the Watch Guides and the ISO standards would result in undue burdens and costs for watch manufacturers. The cost of complying with two sets of guidelines and producing watches separately for the United States would be passed onto the U.S. consumer, resulting in higher watch prices.<sup>33</sup>

In addition to favoring harmonization generally, some comments recommended that the Guides actually incorporate ISO standards verbatim.<sup>34</sup> The comments noted the difficulty with this suggestion because the ISO standards are reviewed every five years and the Watch Guides would need to be revised if there were any ISO standard changes. Some comments therefore recommended that the Guides include a provision that stated that "it shall not be considered unfair or deceptive if a watch meets the requirements in International Standard xxxx."<sup>35</sup>

In addition to these general matters, the comments also discussed various Guide provisions and proposed changes to the provisions.

### III. Reasons for Rescission

After careful consideration, the Commission has determined to rescind the Watch Guides. Sellers must continue to comply with section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices. The Guides, however, are no longer necessary to resolve demonstrated uncertainty regarding what claims are likely to be deceptive. In many instances, ISO standards provide guidance to industry members regarding watch claims. For topics beyond those addressed by the ISO standards, the Guides do not provide substantial guidance regarding deceptive claims, and in certain instances, are outdated. Thus, the Watch Guides are no longer needed.

#### A. ISO Standards Provide Guidance Regarding Watch Claims

The ISO standards may provide useful guidance to industry members in making watch claims. They provide specifications for many watch attributes, including gold alloy coverings and protective features. For example, the ISO standards specify minimum thicknesses for gold-plated watches and test methods for determining that a watch is "water-resistant," "shock-resistant," and "anti-magnetic." Although the ISO standards are not enforceable in the United States, watch

sellers must comply with section 5 of the FTC Act. Thus, objective claims about watches must be truthful and accurate, and substantiated by competent and reliable evidence.

Some of the detailed standards referenced in the existing Guides (such as minimum thicknesses for gold-plated watches and tests to determine water-resistance) may be better established by the ISO or other private standards-setting organizations with expertise in technical issues and industry practices. These organizations also are in a better position to change the standards as technology evolves.<sup>36</sup> As noted by the comments, the ISO standards are developed by technical experts from the major watch producing companies of the world and are reviewed every five years. Thus, it is likely that the ISO standards reflect current technology and industry practice, and, in considering whether marketers have adequately substantiated their claims, the Commission will look to the ISO standards.

As stated in the comments, the Commission recognizes the benefits of harmonizing its guides with international standards and the burdens that would result if the Watch Guides presented differing guidance. The Commission, however, does not believe that it is useful to retain guides that merely reference international standards. Depending on the revision schedule of the ISO standards, the Watch Guides could become quickly outdated and have an unintended effect of burdening technology and watch manufacturers.

#### B. The Guides Are Not Needed to Address Topics Not Covered by ISO Standards

For those topics not addressed by ISO standards, the Watch Guides (1) provide only limited guidance, (2) do not resolve any demonstrated uncertainty regarding what claims are likely to be deceptive, and (3) provide, in certain instances, outdated, unnecessary guidance.

<sup>36</sup> Certain provisions of the Watch Guides have been technologically outdated for some time. For example, section 245.3(f) advises that gold electroplated products contain a minimum thickness of gold alloy of  $\frac{3}{4}$  1000ths of an inch (approximately 19 microns). Comments indicated that technology permits a thinner, yet durable layer of gold to be deposited electrolytically and that the specified minimum thickness was obsolete. (In its second **Federal Register** Notice, the Commission proposed changing this provision.) Due to the changes in technology, industry members by necessity have referred to sources other than the Watch Guides for guidance on making gold electroplate claims.

#### 1. The Guides Provide Limited Guidance to Industry Members

Although Swiss stated that the Watch Guides discuss topics not covered by ISO standards, the Guides provide only limited guidance. For example, the definition of terms in section 245.1 is necessary for the remainder of the Watch Guides, but does not provide essential information to the industry that is not otherwise available.<sup>37</sup> Other sections of the Guides, such as 245.2 and 245.4, merely admonish industry members not to misrepresent various watch features.<sup>38</sup>

The Commission does not believe that it is necessary to retain guides that merely admonish sellers not to misrepresent various items, especially when, as here, there appears to be no lack of understanding that the law forbids such misrepresentations. Instead, guides should assist industry where there is some difficulty in determining compliance.

#### 2. There is No Demonstrated Uncertainty Regarding Deceptive Claims

There do not currently appear to be any particular areas where there is difficulty in determining what is likely to be considered to be deceptive.<sup>39</sup> For

<sup>37</sup> Industry members, for example, do not need to rely on the Watch Guides for definitions of a watch ("a timepiece or time-keeping device for measuring or indicating time which is designed to be worn on or about the person") or watchcase ("any metal case, covering, or housing of any quality or description for a watch . . ."). 16 CFR 245.1(a), 245.1(b).

<sup>38</sup> Section 245.4, for example, advises industry members not to misrepresent a watch's suitability for particular uses, and more specifically, advises that terms such as "skin divers," "navigators," or "railroad" should not be used to describe a watch that does not possess the characteristics required of watches used by persons engaged in such activities.

<sup>39</sup> One comment, however, asked the Commission to establish a test and definition for "waterproof" watches. Bell (7) p.1. The Watch Guides admonish against the use of the term "waterproof," and the Commission solicited comment on whether that admonition was justified. The comments generally supported the admonition against the use of the term. JCWA (1) p.6; EU (2) p.2 ("The use of the terms . . . 'waterproof' must be prohibited because they can disclose [sic] the consumer on the right performance of the watch"); USWC (3) p.2 (the word "proof" is too strong a term); Swiss (5) p.24 ("The word 'proof' connotes a measure of absolute protection that unfortunately does not exist with respect to watches, especially over prolonged periods of time"); Timex (11) p.12 (Timex is not aware of a watch where "immersion in water should have absolutely no effect on the watch whatsoever, regardless of the depth or duration of immersion," and notes that consumers are unfamiliar with such terms). The Commission does not possess adequate information to formulate a definition or test for "waterproof" claims. Moreover, it is unclear how consumers would interpret the term "waterproof," which has not been used to describe watches. Further, no evidence was submitted indicating appropriate tests that could substantiate such a claim. However, there may be technological advances that would comport with

<sup>33</sup> JCWA (1) pp.3-4; Swiss (5) pp.11, 15.

<sup>34</sup> Swiss (5) p.13, n.5.

<sup>35</sup> JCWA (1) p.4; Swiss (5) p.13.

example, there does not appear to be any lack of understanding that a watch described as having a jeweled movement should contain 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. (16 CFR 245.6). In addition, sellers should know, without the Watch Guides, that they may need to qualify a mark indicating a watch's metallic composition, when that mark applies to only certain parts of a watch (e.g., when a watch is made of different metals, but is only marked with its precious metal content, and consumers may be misled that the watch is composed entirely of the precious metal). (16 CFR 245.3(k)). Thus, the Watch Guides do not appear to clarify which representations would be considered deceptive under section 5 of the FTC Act.

### 3. In Certain Instances, The Guides Contain Outdated, Unnecessary Guidance

Two Watch Guide topics, in particular, are not addressed by ISO standards. These two areas involve the marking of a non-precious metal watch and the marking of foreign origin. As discussed below, these two Guide provisions no longer reflect the Commission's interpretation of the law. Therefore, it is unnecessary for the Commission to retain the Watch Guides for these issues.

*a. Non-Precious Metal Markings.* The Watch Guides currently advise manufacturers to mark all watches of metallic composition. Section 245.3(j) advises that when the watch does not contain precious metals, it should be marked as "Base Metal" or the name of the metal of which it is composed (e.g., "stainless steel"). The Commission has determined that it may not be necessary, to prevent deception, to advise that all non-precious metal watches be affirmatively marked as "base metal."<sup>40</sup>

consumer understanding of the term, and the Commission would not consider its use deceptive so long as the watch in fact met consumer expectations and the claim was substantiated by competent and reliable scientific evidence.

<sup>40</sup> In the previous **Federal Register** Notice, the Commission solicited comment on its proposal to delete the guidance that sellers mark base metal watches. Three comments stated that this provision should be retained, because the "base metal" marking provides the consumer information about the watch and reduces the chances that the composition of the watch will be misrepresented. EU (2) p.2; Seiko (6) p.2; AWA (8) p.3. Timex stated that the requirement to mark watches should be eliminated for watches costing less than \$100 because it is not likely that consumers will believe that watches in this price range contain precious metals "absent representations to the contrary." Timex (11) p.7. JCWA and Swiss stated that the requirement should be eliminated. JCWA stated that

Although a "base metal" mark may reduce the chance that a seller may misrepresent the watch's metallic composition, the absence of such a mark will not necessarily deceive consumers. A reasonable consumer is unlikely to assume, in the absence of any representation about the watch's metallic composition, that the watch was composed of a precious metal. Instead, it seems likely that consumers would expect that sellers would want to tout the precious metal content of a item and would affirmatively place a quality mark on the piece. In fact, other products made of metals, such as jewelry, are not required to bear a mark indicating their metallic composition. Consumers, therefore, may believe that an unmarked item is composed of non-precious metals.

Any benefits derived from advising the marking of base metal watches do not necessarily outweigh the burdens on manufacturers who need to mark such watches for sale in the United States. Thus, absent specific evidence that consumers are misled that an unmarked watch contains precious metals, the Commission does not believe that it is necessary to advise sellers to mark non-precious metal watches as "base metal." Of course, the Commission encourages manufacturers to provide information to consumers about the products they sell and admonishes sellers against any misrepresentations of a watch's metallic composition that would violate the FTC Act.

*b. Foreign Origin Markings.* In addition, the Commission does not believe that the current guidance regarding the marking of a watch's country of origin is needed. Section 245.10(a) of the Watch Guides advises that watches containing movements of foreign origin, or movement parts of foreign origin, be marked with the country of origin of the movement. Section 245.10 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. Using these two factors, the Guides provide specific guidance on how the country of origin is determined. See § 245.10(b)(1)–(3).

The Commission proposed deleting this origin marking provision of the Guides in its previous **Federal Register** Notice. The comments received in response to this proposal generally

without any markings, "consumers ought to guess there is no sales point in the product." JCWA (1) p.5. In addition, Swiss stated that the U.S. is the only country that requires marking of base metal watches and that removing this requirement will reduce manufacturers' burdens. Swiss (5) p.20.

avored deleting the provision entirely, or harmonizing it to be identical to the U.S. Customs Service marking requirements.<sup>41</sup> The comments stated that Customs already has established detailed foreign origin marking requirements and that the Guides do not advise the disclosure of material information beyond these requirements. The comments further advised that in the interests of uniformity, the Watch Guides should not provide for different or inconsistent standards than the Customs requirements.<sup>42</sup> In addition, the comments noted World Trade Organization negotiations to harmonize foreign origin markings internationally.<sup>43</sup>

The Commission recognizes the benefits of harmonizing its guidance with Customs regulations, to the extent possible, and acknowledges the international efforts for harmonization of origin markings. In addition, the Commission has determined that it is no longer necessary to generally advise the marking of foreign origin for watches. The Guides advise the disclosure of foreign origin, in part, because of a presumption that consumers would believe that an unmarked product was manufactured in the United States.<sup>44</sup> However, it is not certain that today a significant minority of consumers would believe that a watch without a country of origin marking is of United States origin. Absent specific evidence regarding consumer perception, the Commission does not believe it is necessary to continue to advise sellers to mark foreign country of origin on watches.<sup>45</sup> Thus, the Watch Guides are not necessary to address these issues.

<sup>41</sup> The Watch Guides advised the disclosure of more information (i.e., the origin of movement parts) than the Customs regulations require.

<sup>42</sup> USWC (3) p.2; Swiss (5) pp.28–29; Seiko (6) p.1; AWA (8) p.1; USVI (9) p.2; Timex (11) p.15.

<sup>43</sup> EU (2); Swiss (5) pp.28–29; AWA (8) p.1.

<sup>44</sup> In its review of Made in the USA claims, the Commission determined to cease using the rebuttable presumption that goods not labeled with any country of origin are understood by consumers to be made in the United States. Instead, the Commission stated that it would require disclosure of foreign origin on unmarked goods only if there was some evidence that a significant minority of consumers views country of origin as material and believes that the goods in question, when unlabeled, are made in the United States. 62 FR 63756, 63763 and 63766 (Dec. 2, 1997).

<sup>45</sup> The Commission notes, however, that any misrepresentation of a watch's origin is a violation of section 5 of the FTC Act. Two comments requested that the Commission allow watches produced partially in the United States Virgin Islands to mark their watches as Made in USA. USVI (9) pp.3–4; Mapp (10) p.1. The Commission's Enforcement Policy Statement on Made in the USA claims is of general applicability and should be used as guidance for watch manufacturers. See 62 FR 63756 (Dec. 2, 1997).

### C. Other Guidance and Law Enforcement Tools

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

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

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

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

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

### List of Subjects in 16 CFR Part 245

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

### PART 245—[REMOVED]

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

By direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. 99-14551 Filed 6-8-99; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 10

#### Rules of Practice; Final Rules; Correction

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final Rules; technical corrections.

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

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

#### FOR FURTHER INFORMATION CONTACT:

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

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

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

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

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

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