

Service Bulletin 737–57A1296, Revision 2, dated April 1, 2015; except where Boeing Alert Service Bulletin 737–57A1296, Revision 2, dated April 1, 2015, specifies contacting Boeing for repair instructions, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (n) of this AD. Do all applicable related investigative and corrective actions before further flight. A review of the maintenance records is acceptable in lieu of this inspection if the installation of tapered fillers can be conclusively determined from that review.

(j) New Requirement of This AD: Inspections and Corrective Actions for Group 5 Airplanes

For Group 5 airplanes identified in Boeing Alert Service Bulletin 737–57A1296, Revision 2, dated April 1, 2015: Except as provided by paragraph (k) of this AD, at the applicable time specified in paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 737–57A1296, Revision 2, dated April 1, 2015: Accomplish inspections and applicable corrective actions using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(k) Exception to Service Information

Where paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 737–57A1296, Revision 2, dated April 1, 2015, specifies a compliance time “after the Revision 2 date of this service bulletin,” this AD requires compliance within the specified compliance time “after the effective date of this AD.”

(l) Optional Terminating Action

Accomplishing the applicable preventative modification specified in paragraph 3.B.4., “Preventive Modification” of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1296, Revision 2, dated April 1, 2015, terminates the applicable repetitive inspection required by paragraph (g) of this AD. The preventative modification, including related investigative and corrective actions, must be done in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1296, Revision 2, dated April 1, 2015; except where Boeing Alert Service Bulletin 737–57A1296, Revision 2, dated April 1, 2015, specifies contacting Boeing for repair instructions, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(m) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h)(2) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 737–57–1296, Revision 1, dated September 26, 2012.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector

or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (o)(1) of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) AMOCs approved as specified in the fourth paragraph (related to AD 2008–05–06) of Section 1.F., Approval, of Boeing Service Bulletin 737–57–1296, Revision 1, dated September 26, 2012, for repairs and modifications are not approved for any provision of this AD. All other AMOCs approved for AD 2008–05–06, Amendment 39–15400 (73 FR 11538, March 4, 2008), are approved as AMOCs for the corresponding provisions of this AD.

(o) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: alan.pohl@faa.gov.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 21, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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FEDERAL TRADE COMMISSION

16 CFR Part 23

Guides for the Jewelry, Precious Metals, and Pewter Industries

AGENCY: Federal Trade Commission.

ACTION: Request for public comments on proposed amendments.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) proposes revisions to its Guides for the Jewelry, Precious Metals, and Pewter Industries (“Jewelry Guides” or “Guides”). The proposed revisions aim to respond to changes in the marketplace and help marketers avoid deceptive and unfair practices. This document summarizes the Commission’s proposed revisions to the Guides and includes the proposed revised Guides.

DATES: Comments must be received on or before April 4, 2016.

ADDRESSES: Readers can find the Commission’s complete analysis in the Statement of Basis and Purpose (“Statement”) on the FTC’s Web site at <https://www.ftc.gov/public-statements/2015/12/statement-basis-purpose-proposed-revisions-jewelry-guides>. The Commission seeks comments on these proposed revisions and other issues raised in this document. Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Jewelry Guides, 16 CFR part 23, Project No. G711001” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/jewelryguidesreview>, by following the instructions on the web-based form.

If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex O), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex O), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Reenah L. Kim, Attorney, (202) 326–2272, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In July 2012, the Commission published a **Federal Register** notice initiating a comprehensive regulatory review of the Jewelry Guides.¹ As part of this review,

¹ 77 FR 39201 (July 2, 2012). The Commission issues industry guides to help the industry conform with legal requirements. 16 CFR part 17. Industry guides are administrative interpretations of the law; they do not have the force of law and are not independently enforceable. Failure to follow

the Commission has reviewed the public comments it received in response to the notice, as well as the transcript of a public roundtable it conducted to obtain additional input.² During the review, the Commission received information regarding technological developments and related changes in industry standards and practices and consumer perceptions that affected certain provisions of the Guides.

Under Section 5 of the FTC Act,³ an act or practice is deceptive if it involves a material statement or omission that would mislead a consumer acting reasonably under the circumstances.⁴ Therefore, to prevent deceptive acts and practices pursuant to Section 5, the Commission's guidance should be based on how consumers reasonably interpret claims. The Commission has tried to use available consumer perception evidence whenever possible to develop its guidance. Because marketers have relied on these Guides for decades and have made significant expenditures based on this guidance, the Commission proposes revising existing provisions only when there is a firm record supporting revision. Additionally, the Commission proposes new guidance only when supported by solid evidence of deception to avoid chilling the use of truthful terms that may be useful to consumers.

Based on this framework, the Commission now proposes several amendments to the Guides. Specifically, the Commission proposes revisions in the following areas: (I) Surface application of precious metals; (II) products containing more than one precious metal; (III) alloys with precious metals in amounts below minimum thresholds; (IV) lead-glass-filled stones; (V) varietals; (VI) "cultured" diamonds; (VII) use of the term "gem"; and (VIII) treatments to pearl products.

I. Surface Application of Precious Metals

The Commission proposes three revisions to its guidance on precious metal surface applications. First, based on the comments, to address the deceptive use of precious metal terms for silver and platinum products that are not composed throughout of the advertised metal, the Commission proposes to advise marketers against using silver or platinum terms to describe all, or part of, a coated product unless they adequately qualify the term to indicate the product has only a surface layer of the advertised precious metal.⁵

Second, based on new durability testing, the Commission proposes to update the safe harbors for surface applications of gold.⁶ Specifically, this testing shows that the durability marketers intend to convey can be assured only at thicknesses higher than those specified in the current Guides. Additionally, this testing demonstrates that, for electrolytic applications, durability is assured only when marketers use gold or gold alloy of at least 22 karat fineness, rather than the 10 karat fineness currently provided. The Commission seeks evidence about consumer expectations regarding the durability of products with a surface application of precious metals as compared to products composed throughout of precious metals. As discussed in the Statement, the Commission does not propose guidance for new terms to describe surface applications of silver and platinum group metals not addressed in the Guides, nor does it propose guidance for new surface-application terms, such as "clad" and "bonded," to describe gold and other surface applications. The Commission lacks sufficient evidence on which to base such guidance.

Third, based on consumer perception evidence, the Commission proposes a

new section advising marketers to disclose rhodium surface applications on products marked or described as precious metal, such as rhodium plated items marketed as "white gold" or silver."⁷

II. Products Containing More Than One Precious Metal

Consistent with consumer perception evidence, the Commission proposes adding a new section that states it is unfair or deceptive to misrepresent the relative quantity of each precious metal in a product that contains more than one precious metal.⁸ The proposed guidance advises marketers generally to list precious metals in the order of their relative weight from greatest to least (*i.e.*, leading with the predominant metal). However, it includes examples illustrating that, in some contexts, consumers likely understand that a product contains a greater amount of one metal, even though another metal is listed first (*e.g.*, "14k gold-accented silver"). It also provides examples of marking and descriptions of terms that may be misleading (*e.g.*, use of the term "Platinum + Silver" to describe a product that contains more silver than platinum by weight).

III. Alloys With Precious Metals in Amounts Below Minimum Thresholds

The Commission proposes to revise the Guides to address gold and silver products containing precious metal in amounts below the levels currently specified in the Guides. The current Guides advise marketers to avoid using the terms "gold," "silver," or "platinum," or their abbreviations, to describe or mark a product unless it contains the precious metal in an amount that meets or exceeds the levels specified in Section 23.4 (gold), 23.6 (silver), and 23.7 (platinum group metals). The Commission proposes adding new guidance to the gold and silver sections regarding marketers who have competent and reliable scientific evidence that below-threshold products have materially similar properties (*e.g.*, corrosion- and tarnish-resistance) to at- or above-threshold products. This proposed guidance advises that these marketers may non-deceptively reference these precious metals without additional disclosures other than purity.⁹ Further, the proposed guidance advises marketers selling below-threshold gold and silver alloys that materially differ from at- or above-

industry guides may result, however, in enforcement action under the FTC Act, 15 U.S.C. 45. In any such action, the Commission must prove that the act or practice at issue is unfair or deceptive in violation of Section 5 of the FTC Act.

² As explained in more detail in the Statement of Basis and Purpose, the Commission completed its last comprehensive review of the Jewelry Guides in 1996 (61 FR 27178 (May 30, 1996)), and has modified the Guides four times since, most recently in 2010. 75 FR 81443 (Dec. 28, 2010) (providing guidance on how to mark and describe non-deceptively certain platinum alloys).

³ 15 U.S.C. 45.

⁴ FTC Policy Statement on Deception, appended to *Cliffdale Assoc., Inc.*, 103 FTC 110 (1984); see also *FTC v. Verity Int'l Ltd.*, 443 F.3d 48, 63 (2d Cir. 2006); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994).

⁵ Proposed Section 23.5(b)(3) (silver) and Section 23.6(b)(1) (platinum).

⁶ Proposed Section 23.3(c). In various places, the current Guides' safe harbors refer both to "reasonable durability," which is not defined, and "substantial thickness," which is defined to mean 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." See, *e.g.*, Section 23.4(c)(2), fn 3 (mechanical plating of gold or gold alloy) and 23.6(d) (silver). To clarify that reasonable durability is based on consumer expectation, the Commission proposes defining "reasonable durability" as "all areas of the plating are of such thickness as to assure coverage that reasonable consumers would expect from the surface application." See, *e.g.*, proposed Section 23.3(b)(4), fn 2. This proposed definition incorporates, and therefore replaces, the guidance regarding "substantial thickness" where it appears in the gold and silver sections.

⁷ Proposed Section 23.7.

⁸ Proposed Section 23.8.

⁹ Proposed Note to Section 23.3(b)(9) (gold); proposed Note to Section 23.5(1) and (2) (silver).

threshold products (e.g., 8 karat gold items that tarnish) that they may non-deceptively reference these metals if they disclose that the product may not have the same attributes or properties as jewelry made with the same precious metal at or above the threshold.¹⁰ Finally, the notes advise marketers to accurately disclose the purity of the metal.¹¹ These changes should enable marketers to provide truthful information about precious metal content while dispelling the impression that a product will perform as well as one made with that precious metal in amounts at or above the threshold. For reasons described in the Statement, the Commission does not propose a corresponding note for platinum alloys containing less than 500 parts per thousand platinum.

IV. Lead-Glass-Filled Stones

The Commission proposes adding a new note to the section on “Misuse of the words ‘ruby,’ ‘sapphire,’ etc.”¹² Based on consumer perception evidence, this proposed note states it would be unfair or deceptive to describe products filled with a substantial quantity of lead glass: With the unqualified word “ruby” or name of any other precious or semi-precious stone; as a “treated ruby” or other “treated” precious or semi-precious stone; as a “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” or “synthetic” ruby or other natural stone; or as a “composite ruby,” “manufactured ruby,” “hybrid ruby,” or other precious or semi-precious stone without qualification. The Commission also proposes some examples of terms marketers could use to describe these products non-deceptively (e.g., use of the term “lead-glass-filled ruby” to describe a product made with ruby that is infused with lead glass).¹³

V. Varietals

The Commission proposes adding a new section that states it is unfair or deceptive to mark or describe a product with an incorrect varietal name.¹⁴ Varietal names describe a division of gem species or genus based on color, type of optical phenomenon, or other distinguishing characteristic of appearance (e.g., crystal structure). Based on consumer perception evidence, this proposed section provides two examples of markings or descriptions that may be misleading: (1)

Use of the term “yellow emerald” to describe a golden beryl or heliodor, and (2) the use of the term “green amethyst” to describe prasiolite.

VI. “Cultured” Diamonds

Based on consumer perception evidence, the Commission proposes adding a new diamond example that states it is not unfair or deceptive to use the term “cultured” to describe laboratory-created diamonds if the term is immediately accompanied by “laboratory-created,” “laboratory-grown,” “[manufacturer name]-created,” “synthetic,” or by another word or phrase of like meaning.¹⁵

VII. Misuse of the Word “Gem”

Based on comments noting that the guidance on the term “gem” is circular and subjective, the Commission proposes eliminating Section 23.25 (“Misuse of the word ‘gem’”). In its place, the Commission proposes adding the term “gem” to Section 23.23¹⁶ (Misuse of the words “ruby,” “sapphire,” “emerald,” “topaz,” “stone,” “birthstone,” “gemstone,” etc.). The Commission also proposes eliminating Section 23.20(j) (misuse of the word “gem” as to pearls). As discussed in the Statement, the Commission does not propose further guidance for the term “gem” with regard to pearls.

VIII. Treatments to Pearl Products

Based on comments, the Commission proposes a new section addressing disclosures of treatments to pearls and cultured pearls. This section advises marketers to disclose treatments to such products if the treatment: (a) Is not permanent; (b) creates special care requirements or (c) has a significant effect on the product’s value.¹⁷ The guidance largely tracks the current guidance regarding gemstone treatments.¹⁸

IX. Conclusion

For further analysis of comments and the proposed revised guidance, please see the Statement of Basis and Purpose on the FTC’s Web site, available at <https://www.ftc.gov/public-statements/2015/12/statement-basis-purpose-proposed-revisions-jewelry-guides>.

List of Subjects in 16 CFR Part 23

Advertising, Jewelry, Labeling, Pewter, Precious metals, and Trade practices.

For the reasons set forth in the preamble, and in the Statement of Basis and Purpose on the FTC’s Web site, available at <https://www.ftc.gov/public-statements/2015/12/statement-basis-purpose-proposed-revisions-jewelry-guides>, the Commission proposes to revise 16 CFR part 23, as set forth below:

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

- Sec.
- 23.0 Scope and application.
- 23.1 Deception (general).
- 23.2 Misuse of the terms “hand-made,” “hand-polished,” etc.
- 23.3 Misrepresentation as to gold content.
- 23.4 Misuse of the word “vermeil.”
- 23.5 Misrepresentation as to silver content.
- 23.6 Misuse of the words “platinum,” “iridium,” “palladium,” “ruthenium,” “rhodium,” and “osmium.”
- 23.7 Disclosure of surface-layer application of rhodium.
- 23.8 Misrepresentation as to products containing more than one precious metal.
- 23.9 Misrepresentation as to content of pewter.
- 23.10 Additional guidance for the use of quality marks.
- 23.11 Misuse of “corrosion proof,” “non-corrosive,” “corrosion resistant,” “rust proof,” “rust resistant,” etc.
- 23.12 Definition and misuse of the word “diamond.”
- 23.13 Misuse of the words “flawless,” “perfect,” etc.
- 23.14 Disclosure of treatments to diamonds.
- 23.15 Misuse of the term “blue white.”
- 23.16 Misuse of the term “properly cut,” etc.
- 23.17 Misuse of the words “brilliant” and “full cut.”
- 23.18 Misrepresentation of weight and “total weight.”
- 23.19 Definitions of various pearls.
- 23.20 Misuse of the word “pearl.”
- 23.21 Misuse of terms such as “cultured pearl,” “seed pearl,” “Oriental pearl,” “natura,” “kultured,” “real,” “synthetic,” and regional designations.
- 23.22 Misrepresentation as to cultured pearls.
- 23.23 Disclosure of treatments to pearls and cultured pearls.
- 23.24 Disclosure of treatment to gemstones.
- 23.25 Misuse of the words “ruby,” “sapphire,” “emerald,” “topaz,” “stone,” “birthstone,” “gem,” “gemstone,” etc.
- 23.26 Misuse of the words “real,” “genuine,” “natural,” “precious,” etc.
- 23.27 Misrepresentation as to varietal name.
- 23.28 Misuse of the words “flawless,” “perfect,” etc.

Appendix To Part 23—Exemptions Recognized in the Assay for Quality of Gold Alloy, Gold Filled, Gold Overlay, Rolled Gold Plate, Silver, and Platinum Industry Products

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

¹⁰ *Id.*

¹¹ *Id.*

¹² Proposed Note to Section 23.25.

¹³ *Id.*

¹⁴ Proposed Section 23.27.

¹⁵ Proposed Section 23.12(c)(3).

¹⁶ Renumbered as Section 23.25 in the proposed Guides.

¹⁷ Proposed Section 23.23.

¹⁸ 16 CFR 23.22 (now renumbered as proposed Section 23.24).

§ 23.0 Scope and application.

(a) These guides apply to jewelry industry products, which include, but are not limited to, the following: Gemstones and their laboratory-created and imitation substitutes; natural and cultured pearls and their imitations; and metallic watchbands not permanently attached to watches. These guides also apply to articles, including optical frames, pens and pencils, flatware, and hollowware, fabricated from precious metals (gold, silver and platinum group metals), precious metal alloys, and their imitations. These guides also apply to all articles made from pewter. For the purposes of these guides, all articles covered by these guides are defined as “industry products.”

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

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

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

(d) These guides set forth the Federal Trade Commission’s current thinking about claims for jewelry and other articles made from precious metals and pewter. The guides help marketers and other industry members avoid making claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45. They do not confer any rights on any person and do not operate to bind the FTC or the public. The Commission, however, may take action under the FTC Act if a marketer or other industry member makes a claim inconsistent with the guides. In any such enforcement action, the Commission must prove that the challenged act or practice is unfair or deceptive in violation of Section 5 of the FTC Act.

(e) The guides consist of general principles, specific guidance on the use of particular claims for industry products, and examples. Claims may raise issues that are addressed by more than one example and in more than one section of the guides. The examples

provide the Commission’s views on how reasonable consumers likely interpret certain claims. Industry members may use an alternative approach if the approach satisfies the requirements of Section 5 of the FTC Act. Whether a particular claim is deceptive will depend on the net impression of the advertisement, label, or other promotional material at issue. In addition, although many examples present specific claims and options for qualifying claims, the examples do not illustrate all permissible claims or qualifications under Section 5 of the FTC Act.

§ 23.1 Deception (general).

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

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

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

Note 3 to § 23.1: An illustration or depiction of a diamond or other gemstone that portrays it in greater than its actual size may mislead consumers, unless a disclosure is made about the item’s true size.

§ 23.2 Misuse of the terms “handmade,” “hand polished,” etc.

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

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

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

§ 23.3 Misrepresentation as to gold content.

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

(b) The following are examples of markings or descriptions that may be misleading:¹

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

(2) Use of the word “Gold” or any abbreviation to describe all or part of an industry product composed throughout of an alloy of gold, unless a correct designation of the karat fineness of the alloy immediately precedes the word “Gold” or its abbreviation, and such fineness designation is of at least equal conspicuousness.

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

(4) Use of the term “Gold Plate,” “Gold Plated,” or any abbreviation to describe all or part of an industry product unless such product or part contains a surface-plating of gold alloy, applied by any process, which is of such thickness and extent of surface coverage that reasonable durability² is assured.

¹ See § 23.3(c) for examples of acceptable markings and descriptions.

² For the purpose of this section, “reasonable durability” means that all areas of the plating are of such thickness as to assure coverage that reasonable consumers would expect from the surface application. Since industry products include items having surfaces and parts of surfaces that are subject to different degrees of wear, the thickness of the surface application for all items or

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

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

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

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

(9) Use of the word “Gold” or any abbreviation, or of a quality mark implying gold content (e.g., 9 karat), to describe all or part of an industry product that is composed throughout of an alloy of gold of less than 10 karat fineness.

Note to paragraph (b)(9): For an industry product that is not composed throughout of an alloy of gold of at least 10 karat fineness, using the word “gold” or any abbreviation, or a quality mark implying gold content (e.g., 9 karat), may not be deceptive to describe all or part of the product if the marketer has competent and reliable scientific evidence that such product does not differ materially from a product composed throughout of an alloy of gold of at least 10 karat fineness with respect to the following attributes or properties: Corrosion resistance, tarnish resistance, and any other attribute or property material to consumers. In those circumstances, a correct designation of the karat fineness of the alloy should immediately precede the word “gold” or its

abbreviation, and such fineness designation should be of at least equal conspicuousness. If the marketer lacks such evidence, in addition to disclosing the karat fineness of the alloy, it should also disclose that the product may not have the same attributes or properties as products that contain at least 10 karats.

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

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

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

(2) An industry product or part thereof on which there has been affixed on all significant surfaces by soldering, brazing, welding, or other mechanical means, a plating of gold alloy of not less than 10 karat fineness and of a minimum thickness throughout of gold or gold alloy that is 170 millionths of an inch (approximately 4.3 microns) may be marked or described as “Gold Filled,” “Gold Overlay,” “Rolled Gold Plate,” “Gold Plate,” “Gold Plated,” or an adequate abbreviation, when such plating constitutes at least 1/20th of the weight of the metal in the entire article and when the term is immediately preceded by a designation of the karat fineness of the plating which is of equal conspicuousness as the term used (for example, “14 Karat Gold Filled,” “14 Kt. Gold Filled,” “14 Kt. G.F.,” “14 Kt. Gold Overlay,” or “14K. R.G.P.”). The exact thickness of the plate may be

marked on the item, if it is immediately followed by a designation of the karat fineness of the plating, which is of equal conspicuousness as the term used (as, for example, “4.3 microns 12 K gold overlay” or “4.3 μ 14 Kt. G.F.” for items plated with 4.3 microns of 12 karat and 14 karat gold, respectively).

Note to paragraph (c)(2): If an industry product has a thicker coating of gold or gold alloy on some areas than others, the minimum thickness of the plate should be marked. When conforming to all such requirements except the specified minimum of 1/20th of the weight of the metal in the entire article, the terms “Gold Overlay,” “Gold Plate,” “Gold Plated,” and “Rolled Gold Plate” may be used when the karat fineness designation is immediately preceded by a fraction accurately disclosing the portion of the weight of the metal in the entire article accounted for by the plating, and when such fraction is of equal conspicuousness as the term used (for example, “1/40th 12 Kt. Rolled Gold Plate” or “1/40 12 Kt. R.G.P.”).

(3) 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 gold alloy of not less than 22 karats that is 15 millionths of an inch (approximately 0.381 microns) may be marked or described as “Gold Plate,” “Gold Plated,” “Gold Electroplate” or “Gold Electroplated,” or abbreviated, as, for example, “G.E.P.” When the electroplating meets the minimum fineness but not the minimum thickness specified above, the marking or description may be “Gold Flashed” or “Gold Washed.” 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 gold alloy of not less than 22 karats that is 100 millionths of an inch (approximately 2.54 microns) may be marked or described as “Heavy Gold Electroplate” or “Heavy Gold Electroplated.” When electroplatings qualify for the term “Gold Electroplate” (or “Gold Electroplated”), or the term “Heavy Gold Electroplate” (or “Heavy Gold Electroplated”), and have been applied by use of a particular kind of electrolytic process, the marking may be accompanied by identification of the process used, as for example, “Gold Electroplated (X Process)” or “Heavy Gold Electroplated (Y Process).” The exact thickness of the plate may be marked on the item, if it is immediately followed by a designation of the karat fineness of the plating, which is of equal conspicuousness as the term used (as, for example, “0.381 microns 22 K gold electroplate” for an item plated with 0.381 microns of 22 karat gold or “2.54

for different areas of the surface of individual items does not necessarily have to be uniform.

μ 22 K. heavy gold electroplated” for an item plated with 2.54 microns of 22 karat gold).

Note to paragraph (c)(3): If an industry product has a thicker electroplating of gold or gold alloy on some areas than others, the minimum thickness of the plate should be marked.

(d) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.³

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

§ 23.4 Misuse of the word “vermeil.”

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

(b) An industry product may be described or marked as “vermeil” if it consists of a base of sterling silver coated or plated on all significant surfaces with gold or gold alloy of not less than 22 karat fineness and a minimum thickness throughout of 100 millionths of an inch (approximately 2.54 microns).

Note 1 to § 23.4: It is unfair or deceptive to use the term “vermeil” to describe a product in which the sterling silver has been covered with a base metal (such as nickel) plated with gold unless there is a disclosure that the sterling silver is covered with a base metal that is plated with gold.

Note 2 to § 23.4: Exemptions recognized in the assay of gold filled, gold overlay, and rolled gold plate industry products are listed in the appendix.

§ 23.5 Misrepresentation as to silver content.

(a) It is unfair or deceptive to misrepresent that an industry product contains silver, or to misrepresent a product’s silver content, plating, electroplating, or coating.

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

(1) Use of the words “silver,” “solid silver,” “Sterling Silver,” “Sterling,” or the abbreviation “Ster.” to describe all or part of an industry product unless it is at least 925/1,000ths pure silver.

(2) Use of the words “coin” or “coin silver” to describe all or part of an industry product unless it is at least 900/1,000ths pure silver.

Note to paragraphs 5(b)(1) and (2): A marketer may mark, describe, or otherwise represent all or part an industry product as silver even when it is not at least 925/1,000ths pure silver if the marketer has competent and reliable scientific evidence that such product does not differ materially from a product that is at least 925/1,000ths pure silver with respect to the following attributes or properties: Corrosion resistance, tarnish resistance, and any other attribute or property material to consumers. In those circumstances, a correct designation of the purity of the alloy should immediately precede the word “silver” or its abbreviation, and such designation should be of at least equal conspicuousness. If the marketer lacks such evidence, in addition to disclosing the purity of the alloy, it should also disclose that the product may not have the same attributes or properties as products that contain at least 925/1,000ths. The terms “solid silver,” “sterling silver,” “sterling,” and the abbreviation “Ster.” should not be used to mark or describe such products that are not at least 925/1,000ths pure silver. Consistent with § 23.6(b)(2), marketers may use the terms “coin” or “coin silver” only if the product is at least 900/1,000ths pure silver.

(3) Use of the word “silver” or any abbreviation to describe all or part of a product that is not composed throughout of silver, but has a surface layer or coating of silver, unless the word “silver” or its abbreviation is adequately qualified to indicate that the product or part is only coated.

(4) Marking, describing, or otherwise representing all or part of an industry product as being plated or coated with silver unless all significant surfaces of the product or part contain a plating or coating of silver that is of reasonable durability.⁴

(c) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.⁵

Note 1 to § 23.5: The National Stamping Act provides that silver-plated articles shall not “be stamped, branded, engraved or imprinted with the word ‘sterling’ or the word ‘coin,’ either alone or in conjunction with other words or marks.” 15 U.S.C. 297(a).

Note 2 to § 23.5: Exemptions recognized in the assay of silver industry products are listed in the appendix.

§ 23.6 Misuse of the words “platinum,” “iridium,” “palladium,” “ruthenium,” “rhodium,” and “osmium.”

(a) It is unfair or deceptive to use the words “platinum,” “iridium,” “palladium,” “ruthenium,” “rhodium,” or any abbreviation to mark or describe all or part of an industry product if such marking or description misrepresents the product’s true composition. The Platinum Group Metals (PGM) are Platinum, Iridium, Palladium, Ruthenium, Rhodium, and Osmium.

(b) The following are examples of markings or descriptions that may be misleading:⁶

(1) Use of the word “Platinum” or any abbreviation to describe all or part of a product that is not composed throughout of platinum, but has a surface layer or coating of platinum, unless the word “Platinum” or its abbreviation is adequately qualified to indicate that the product or part is only coated.

(2) Use of the word “Platinum” or any abbreviation, without qualification, to describe all or part of an industry product that is not composed throughout of 950 parts per thousand pure Platinum.

(3) Use of the word “Platinum” or any abbreviation accompanied by a number indicating the parts per thousand of pure Platinum contained in the product without mention of the number of parts per thousand of other PGM contained in the product, to describe all or part of an industry product that is not composed throughout of at least 850 parts per thousand pure platinum, for example, “600Plat.”

(4) Use of the word “Platinum” or any abbreviation thereof, to mark or describe any product that is not composed throughout of at least 500 parts per thousand pure Platinum.

(5) Use of the word “Platinum,” or any abbreviation accompanied by a number or percentage indicating the parts per thousand of pure Platinum contained in the product, to describe all or part of an industry product that contains at least 500 parts per thousand, but less than 850 parts per thousand, pure Platinum, and does not contain at least 950 parts per thousand PGM (for example, “585 Plat.”) without a clear and conspicuous disclosure, immediately following the name or description of such product:

(i) Of the full composition of the product (by name and not abbreviation) and percentage of each metal; and

⁶ See paragraph (c) of this section for examples of acceptable markings and descriptions.

³ Under the National Stamping Act, articles or parts made of gold or of gold alloy that contain no solder have a permissible tolerance of three parts per thousand. If the part tested contains solder, the permissible tolerance is seven parts per thousand. For full text, see 15 U.S.C. 295, *et seq.*

⁴ See footnote 2.

⁵ Under the National Stamping Act, sterling silver articles or parts that contain no solder have a permissible tolerance of four parts per thousand. If the part tested contains solder, the permissible tolerance is ten parts per thousand. For full text, see 15 U.S.C. 294, *et seq.*

(ii) That the product may not have the same attributes or properties as traditional platinum products. Provided, however, that the marketer need not make disclosure under § 23.7(b)(5)(ii), if the marketer has competent and reliable scientific evidence that such product does not differ materially from a product containing at least 850 parts per thousand pure Platinum with respect to the following attributes or properties: Durability, luster, density, scratch resistance, tarnish resistance, hypo-allergenicity, ability to be resized or repaired, retention of precious metal over time, and any other attribute or property material to consumers.

Note to paragraph (b)(5): When using percentages to qualify platinum representations, marketers should convert the amount in parts per thousand to a percentage that is accurate to the first decimal place (e.g., 58.5% Platinum, 41.5% Cobalt).

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

(1) The following abbreviations for each of the PGM may be used for quality marks on articles: "Plat." or "Pt." for Platinum; "Irid." or "Ir." for Iridium; "Pall." or "Pd." for Palladium; "Ruth." or "Ru." for Ruthenium; "Rhod." or "Rh." for Rhodium; and "Osmi." or "Os." for Osmium.

(2) An industry product consisting of at least 950 parts per thousand pure Platinum may be marked or described as "Platinum."

(3) An industry product consisting of 850 parts per thousand pure Platinum, 900 parts per thousand pure Platinum, or 950 parts per thousand pure Platinum may be marked "Platinum," provided that the Platinum marking is preceded by a number indicating the amount in parts per thousand of pure Platinum (for industry products consisting of 950 parts per thousand pure Platinum, the marking described in § 23.7(b) (2) above is also appropriate). Thus, the following markings may be used: "950Pt.," "950Plat.," "900Pt.," "900Plat.," "850Pt.," or "850Plat."

(4) An industry product consisting of at least 950 parts per thousand PGM, and of at least 500 parts per thousand pure Platinum, may be marked "Platinum," provided that the mark of each PGM constituent is preceded by a number indicating the amount in parts per thousand of each PGM, as for example, "600Pt.350Ir.," "600Plat.350Irid.," "550Pt.350Pd.50Ir.," or "550Plat.350Pall.50Irid."

(5) An industry product consisting of at least 500 parts per thousand, but less than 850 parts per thousand, pure Platinum, and not consisting of at least

950 parts per thousand PGM, may be marked accurately, with a quality marking on the article, using parts per thousand and standard chemical abbreviations (e.g., 585 Pt., 415 Co.).

Note to § 23.6: Exemptions recognized in the assay of platinum industry products are listed in appendix A of this part.

§ 23.7 Disclosure of surface-layer of application of rhodium.

It is unfair or deceptive to fail to disclose a surface-layer application of rhodium on products marked or described as precious metal.

§ 23.8 Misrepresentation as to products containing more than one precious metal.

(a) It is unfair or deceptive to misrepresent the relative quantity of each precious metal in a product that contains more than one precious metal. Marketers should list precious metals in the order of their relative weight in the product from greatest to least (i.e., leading with the predominant metal). Listing precious metals in order of relative weight is not necessary where it is clear to reasonable consumers from context that the metal listed first is not predominant.

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

(1) Use of the terms "Platinum + Silver" to describe a product that contains more silver than platinum by weight.

(2) Use of the terms "14K/Sterling" to describe a product that contains more silver than gold by weight.

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

(1) For a product comprised primarily of silver with a surface-layer application of platinum, "900 platinum over silver."

(2) For a product comprised primarily of silver with visually distinguishable parts of gold, "14k gold-accented silver."

(3) For a product comprised primarily of gold with visually distinguishable parts of platinum, "850 Platinum inset, 14K gold ring."

§ 23.9 Misrepresentation as to content of pewter.

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

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

composed of metals appropriate for use in pewter.

§ 23.10 Additional guidance for the use of quality marks.

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

(a) Deception as to applicability of marks.

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

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

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

purchasers of the product might only observe the word “gold.”)

Note 1 to § 23.10: Legibility of markings. If a quality mark is engraved or stamped on an industry product, or is printed on a tag or label attached to the product, the quality mark should be of sufficient size type as to be legible to persons of normal vision, should be so placed as likely to be observed by purchasers, and should be so attached as to remain thereon until consumer purchase.

Note 2 to § 23.10: Disclosure of identity of manufacturers, processors, or distributors. The National Stamping Act provides that any person, firm, corporation, or association, being a manufacturer or dealer subject to section 294 of the Act, who applies or causes to be applied a quality mark, or imports any article bearing a quality mark “which indicates or purports to indicate that such article is made in whole or in part of gold or silver or of an alloy of either metal” shall apply to the article the trademark or name of such person. 15 U.S.C. 297.

§ 23.11 Misuse of “corrosion proof,” “noncorrosive,” “corrosion resistant,” “rust proof,” “rust resistant,” etc.

(a) It is unfair or deceptive to:

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

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

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

§ 23.12 Definition and misuse of the word “diamond.”

(a) A diamond is a natural mineral consisting essentially of pure carbon crystallized in the isometric system. It is found in many colors. Its hardness is 10; its specific gravity is approximately 3.52; and it has a refractive index of 2.42.

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

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

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

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

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

(3) The use of the word “cultured” to describe laboratory-created diamonds if the term is immediately accompanied, with equal conspicuousness, by the words “laboratory-created,” “laboratory-grown,” “[manufacturer name]-created,” “synthetic,” or by some other word or phrase of like meaning, so as to clearly disclose that it is a laboratory-created product.

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

§ 23.13 Misuse of the words “flawless,” “perfect,” etc.

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

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

(c) It is unfair or deceptive to use the words “flawless” or “perfect” to describe a ring or other article of jewelry having a “flawless” or “perfect” principal diamond or diamonds, and supplementary stones that are not of such quality, unless there is a disclosure that the description applies only to the principal diamond or diamonds.

§ 23.14 Disclosure of treatments to diamonds.

A diamond is a gemstone product. Treatments to diamonds should be disclosed in the manner prescribed in § 23.24 of these guides, Disclosure of treatments to gemstones.

§ 23.15 Misuse of the term “blue white.”

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

§ 23.16 Misuse of the term “properly cut,” etc.

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

Note to § 23.16: Stones that are commonly called “fisheye” or “old mine” should not be described as “properly cut,” “modern cut,” etc.

§ 23.17 Misuse of the words “brilliant” and “full cut.”

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

Note to § 23.17: Such terms should not be applied to single or rose-cut diamonds. They may be applied to emerald-(rectangular) cut, pear-shaped, heart-shaped, oval-shaped, and marquise-(pointed oval) cut diamonds meeting the above-stated facet requirements when, in immediate conjunction with the term used, the form of the diamond is disclosed.

§ 23.18 Misrepresentation of weight and “total weight.”

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

(b) It is unfair or deceptive to use the word “point” or any abbreviation in any representation, advertising, marking, or labeling to describe the weight of a diamond, unless the weight is also stated as decimal parts of a carat (e.g., 25 points or .25 carat).

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

(c) If diamond weight is stated as decimal parts of a carat (e.g., .47 carat),

the stated figure should be accurate to the last decimal place. If diamond weight is stated to only one decimal place (e.g., .5 carat), the stated figure should be accurate to the second decimal place (e.g., “.5 carat” could represent a diamond weight between .495–.504).

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

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

§ 23.19 Definitions of various pearls.

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

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

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

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

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

§ 23.20 Misuse of the word “pearl.”

(a) It is unfair or deceptive to use the unqualified word “pearl” or any other word or phrase of like meaning to describe, identify, or refer to any object or product that is not in fact a pearl, as defined in § 23.19(a).

(b) It is unfair or deceptive to use the word “pearl” to describe, identify, or

refer to a cultured pearl unless it is immediately preceded, with equal conspicuousness, by the word “cultured” or “cultivated,” or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

(c) It is unfair or deceptive to use the word “pearl” to describe, identify, or refer to an imitation pearl unless it is immediately preceded, with equal conspicuousness, by the word “artificial,” “imitation,” or “simulated,” or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

(d) It is unfair or deceptive to use the terms “faux pearl,” “fashion pearl,” “Mother of Pearl,” or any other such term to describe or qualify an imitation pearl product unless it is immediately preceded, with equal conspicuousness, by the word “artificial,” “imitation,” or “simulated,” or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

§ 23.21 Misuse of terms such as “cultured pearl,” “seed pearl,” “Oriental pearl,” “natura,” “cultured,” “real,” “synthetic,” and regional designations.

(a) It is unfair or deceptive to use the term “cultured pearl,” “cultivated pearl,” or any other word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

(b) It is unfair or deceptive to use the term “seed pearl” or any word, term, or phrase of like meaning to describe, identify, or refer to a cultured or an imitation pearl, without using the appropriate qualifying term “cultured” (e.g., “cultured seed pearl”) or “simulated,” “artificial,” or “imitation” (e.g., “imitation seed pearl”).

(c) It is unfair or deceptive to use the term “Oriental pearl” or any word, term, or phrase of like meaning to describe, identify, or refer to any industry product other than a pearl taken from a salt water mollusk and of the distinctive appearance and type of pearls obtained from mollusks inhabiting the Persian Gulf and recognized in the jewelry trade as Oriental pearls.

(d) It is unfair or deceptive to use the word “Oriental” to describe, identify, or refer to any cultured or imitation pearl.

(e) It is unfair or deceptive to use the word “natura,” “natural,” “nature’s,” or any word, term, or phrase of like meaning to describe, identify, or refer to a cultured or imitation pearl. It is unfair or deceptive to use the term “organic” to describe, identify, or refer to an imitation pearl, unless the term is qualified in such a way as to make clear

that the product is not a natural or cultured pearl.

(f) It is unfair or deceptive to use the term “cultured,” “semi-cultured pearl,” “cultured-like,” “part-cultured,” “premature cultured pearl,” or any word, term, or phrase of like meaning to describe, identify, or refer to an imitation pearl.

(g) It is unfair or deceptive to use the term “South Sea pearl” unless it describes, identifies, or refers to a pearl that is taken from a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia. It is unfair or deceptive to use the term “South Sea cultured pearl” unless it describes, identifies, or refers to a cultured pearl formed in a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia.

(h) It is unfair or deceptive to use the term “Biwa cultured pearl” unless it describes, identifies, or refers to cultured pearls grown in fresh water mollusks in the lakes and rivers of Japan.

(i) It is unfair or deceptive to use the word “real,” “genuine,” “precious,” or any word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

(j) It is unfair or deceptive to use the word “synthetic” or similar terms to describe cultured or imitation pearls.

(k) It is unfair or deceptive to use the terms “Japanese Pearls,” “Chinese Pearls,” “Mallorca Pearls,” or any regional designation to describe, identify, or refer to any cultured or imitation pearl, unless the term is immediately preceded, with equal conspicuousness, by the word “cultured,” “artificial,” “imitation,” or “simulated,” or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is a cultured or imitation pearl.

§ 23.22 Misrepresentation as to cultured pearls.

It is unfair or deceptive to misrepresent the manner in which cultured pearls are produced, the size of the nucleus artificially inserted in the mollusk and included in cultured pearls, the length of time that such products remained in the mollusk, the thickness of the nacre coating, the value and quality of cultured pearls as compared with the value and quality of pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls.

§ 23.23 Disclosure of treatments to pearls and cultured pearls.

It is unfair or deceptive to fail to disclose that a pearl or cultured pearl has been treated if:

(a) The treatment is not permanent. The seller should disclose that the pearl or cultured pearl has been treated and that the treatment is or may not be permanent;

(b) The treatment creates special care requirements for the pearl or cultured pearl. The seller should disclose that the pearl or cultured pearl has been treated and has special care requirements. It is also recommended that the seller disclose the special care requirements to the purchaser;

(c) The treatment has a significant effect on the product's value. The seller should disclose that the pearl or cultured pearl has been treated.

Note to § 23.23: The disclosures outlined in this section are applicable to sellers at every level of trade, as defined in § 23.0(b) of these Guides, and they may be made at the point of sale prior to sale, except that where a product can be purchased without personally viewing the product (e.g., direct mail catalogs, online services, televised shopping programs), disclosure should be made in the solicitation for, or description of, the product.

§ 23.24 Disclosure of treatments to gemstones.

It is unfair or deceptive to fail to disclose that a gemstone has been treated if:

(a) The treatment is not permanent. The seller should disclose that the gemstone has been treated and that the treatment is or may not be permanent;

(b) The treatment creates special care requirements for the gemstone. The seller should disclose that the gemstone has been treated and has special care requirements. It is also recommended that the seller disclose the special care requirements to the purchaser;

(c) The treatment has a significant effect on the stone's value. The seller should disclose that the gemstone has been treated.

Note to § 23.24: The disclosures outlined in this section are applicable to sellers at every level of trade, as defined in § 23.0(b) of these Guides, and they may be made at the point of sale prior to sale; except that where a product can be purchased without personally viewing the product (e.g., direct mail catalogs, online services, televised shopping programs), disclosure should be made in the solicitation for, or description of, the product.

§ 23.25 Misuse of the words "ruby," "sapphire," "emerald," "topaz," "stone," "birthstone," "gem," "gemstone," etc.

(a) It is unfair or deceptive to use the unqualified words "ruby," "sapphire," "emerald," "topaz," or the name of any other precious or semi-precious stone to describe any product that is not in fact a natural stone of the type described.

(b) It is unfair or deceptive to use the word "ruby," "sapphire," "emerald," "topaz," or the name of any other precious or semi-precious stone, or the word "stone," "birthstone," "gem," "gemstone," or similar term to describe a laboratory-grown, laboratory-created, [manufacturer name]-created, synthetic, imitation, or simulated stone, unless such word or name is immediately preceded with equal conspicuousness by the word "laboratory-grown," "laboratory-created," "[manufacturer name]-created," "synthetic," or by the word "imitation" or "simulated," so as to disclose clearly the nature of the product and the fact it is not a natural gemstone.

Note to paragraph (b): The use of the word "faux" to describe a laboratory-created or imitation stone is not an adequate disclosure that the stone is not natural.

(c) It is unfair or deceptive to use the word "laboratory-grown," "laboratory-created," "[manufacturer name]-created," or "synthetic" with the name of any natural stone to describe any industry product unless such industry product has essentially the same optical, physical, and chemical properties as the stone named.

Note to § 23.25: It would be unfair or deceptive to describe products filled with a substantial quantity of lead glass in the following way:

- (1) With the unqualified word "ruby," "sapphire," "emerald," "topaz," or name of any other precious or semi-precious stone;
- (2) As a "treated ruby" or other "treated" precious or semi-precious stone;
- (3) As a "laboratory-grown," "laboratory-created," "[manufacturer name]-created," or "synthetic" "ruby" or other natural stone;
- (4) As a "composite ruby" or other "composite" precious or semi-precious stone without qualification;
- (5) As a "hybrid ruby" or other "hybrid" precious or semi-precious stone without qualification; or
- (6) As a "manufactured ruby" or other "manufactured" precious or semi-precious stone without qualification.

The following are examples of descriptions for such products that are not considered deceptive:

- (1) use of the terms "lead-glass filled corundum" or "lead-glass filled composite corundum" to describe a product made with low-grade corundum (not ruby) that is infused with lead glass;
- (2) use of the terms "lead-glass-filled ruby" or "lead-glass-filled composite ruby" to

describe a product made with ruby that is infused with lead glass.

§ 23.26 Misuse of the words "real," "genuine," "natural," "precious," etc.

It is unfair or deceptive to use the word "real," "genuine," "natural," "precious," "semi-precious," or similar terms to describe any industry product that is manufactured or produced artificially.

§ 23.27 Misrepresentation as to varietal name.

(a) It is unfair or deceptive to mark or describe an industry product with the incorrect varietal name.

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

- (1) Use of the term "yellow emerald" to describe golden beryl or heliodor.
- (2) Use of the term "green amethyst" to describe prasiolite.

Note to § 23.27: A varietal name is given for a division of gem species or genus based on a color, type of optical phenomenon, or other distinguishing characteristic of appearance.

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

(a) It is unfair or deceptive to use the word "flawless" as a quality description of any gemstone that discloses blemishes, inclusions, or clarity faults of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in gemstone grading.

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

(c) It is unfair or deceptive to use the word "flawless," "perfect," or any representation of similar meaning to describe any imitation gemstone.

Appendix to Part 23—Exemptions Recognized in the Assay for Quality ff Gold Alloy, Gold Filled, Gold Overlay, Rolled Gold Plate, Silver, and Platinum Industry Products

(a) Exemptions recognized in the industry and not to be considered in any assay for quality of a karat gold industry product include springs, posts, and separable backs of lapel buttons, posts and nuts for attaching interchangeable ornaments, metallic parts completely and permanently encased in a nonmetallic covering, field pieces and bezels for lockets,⁷ and wire pegs or rivets used for

⁷ Field pieces of lockets are those inner portions used as frames between the inside edges of the locket and the spaces for holding pictures. Bezels are the separable inner metal rings to hold the pictures in place.

applying mountings and other ornaments, which mountings or ornaments shall be of the quality marked.

Note: Exemptions recognized in the industry and not to be considered in any assay for quality of a karat gold optical product include: the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings, and nuts of screw assemblies; dowels; springs for spring shoe straps; metal parts permanently encased in a non-metallic covering; and for oxfords,⁸ coil and joint springs.

(b) Exemptions recognized in the industry and not to be considered in any assay for quality of a gold filled, gold overlay and rolled gold plate industry product, other than watchcases, include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., field pieces and bezels for lockets, posts and separate backs of lapel buttons, bracelet and necklace snap tongues, springs, and metallic parts completely and permanently encased in a nonmetallic covering.

Note: Exemptions recognized in the industry and not to be considered in any assay for quality of a gold filled, gold overlay and rolled gold plate optical product include: screws; the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings, tubes and nuts of screw assemblies; dowels; pad inserts; springs for spring shoe straps, cores and/or inner windings of comfort cable temples; metal parts permanently encased in a nonmetallic covering; and for oxfords, the handle and catch.

(c) Exemptions recognized in the industry and not to be considered in any assay for quality of a silver industry product include screws, rivets, springs, spring pins for wrist watch straps; posts and separable backs of lapel buttons; wire pegs, posts, and nuts used for applying mountings or other ornaments, which mountings or ornaments shall be of the quality marked; pin stems (e.g., of badges, brooches, emblem pins, hat pins, and scarf pins, etc.); levers for belt buckles; blades and skeletons of pocket knives; field pieces and bezels for lockets; bracelet and necklace snap tongues; any other joints, catches, or screws; and metallic parts completely and permanently encased in a nonmetallic covering.

(d) Exemptions recognized in the industry and not to be considered in any assay for quality of an industry product of silver in combination with gold include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., posts and separable backs of lapel buttons, springs, and metallic parts completely and permanently encased in a nonmetallic covering.

(e) Exemptions recognized in the industry and not to be considered in any assay for quality of a platinum industry product include springs, winding bars, sleeves, crown cores, mechanical joint pins, screws, rivets, dust bands, detachable movement rims, hat pin stems, and bracelet and necklace snap

tongues. In addition, the following exemptions are recognized for products marked in accordance with § 23.6(b)(5) of these Guides (i.e., products that are less than 500 parts per thousand platinum): pin tongues, joints, catches, lapel button backs and the posts to which they are attached, scarf-pin stems, hat pin sockets, shirt-stud backs, vest-button backs, and ear screw backs, provided such parts are made of the same quality platinum as is used in the balance of the article.

By direction of the Commission.

Donald S. Clark,
Secretary.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038-AE16

Alternative to Fingerprinting Requirement for Foreign Natural Persons

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend existing Commission regulations to establish an alternative to fingerprinting to evaluate the fitness of natural persons who are required to submit fingerprints under the Commission's regulations and who have not resided in the United States since reaching 18 years of age ("Proposal").

DATES: Comments must be received on or before February 11, 2016.

ADDRESSES: You may submit comments, identified by RIN 3038-AE16, by any of the following methods:

- *Agency Web site:* Via its Comments Online process: <http://comments.cftc.gov>. Follow the instructions on the Web site for submitting comments.

- *Mail:* Send to Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

- *Hand delivery/Courier:* Same as Mail above.

- *Federal eRulemaking Portal:* at <http://www.regulations.gov/>. Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make

available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act,¹ a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.²

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

Katherine Driscoll, Associate Chief Counsel, 202-418-5544, kdriscoll@cftc.gov; Jacob Chachkin, Special Counsel, 202-418-5496, jchachkin@cftc.gov; or Adam Kezsbom, Special Counsel, 202-418-5372, akezsbom@cftc.gov, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Subject to certain exceptions and exclusions, persons engaging in specified activities involving commodity interests³ are required pursuant to the Commodity Exchange Act ("CEA" or "Act") and/or Commission regulations⁴ to register with the Commission in certain registration categories. These include registration as a futures commission merchant ("FCM"), retail foreign exchange dealer ("RFED"), introducing broker ("IB"), commodity pool operator ("CPO"), commodity trading advisor ("CTA"), swap dealer ("SD"), major

¹ 5 U.S.C. 552.

² Commission regulations referred to herein are found at 17 CFR chapter. 1. Commission regulations are accessible on the Commission's Web site, <http://www.cftc.gov>.

³ A commodity interest is (1) any contract for the purchase or sale of a commodity for future delivery; (2) any contract, agreement or transaction subject to a Commission regulation under section 4c or 19 of the Commodity Exchange Act; (3) any contract, agreement or transaction subject to Commission jurisdiction under section 2(c)(2) of such Act; and (4) Any swap as defined in such Act, by the Commission, or jointly by the Commission and the Securities and Exchange Commission. 17 CFR 1.3(yy).

⁴ See, e.g., Commission regulation 3.4(a). 17 CFR 3.4(a).

⁸ Oxfords are a form of eyeglasses where a flat spring joins the two eye rims and the tension it exerts on the nose serves to hold the unit in place. Oxfords are also referred to as pince nez.