



**[BILLING CODE: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**16 CFR PART 23**

**Guides for the Jewelry, Precious Metals, and Pewter Industries**

**AGENCY:** Federal Trade Commission (“FTC” or “Commission”).

**ACTION:** Guides; Request for public comments.

**SUMMARY:** The Commission systematically reviews all of its current rules and guides to ensure that they continue to achieve their intended purpose without unduly burdening commerce. As part of this review, the Commission requests public comments on the overall costs, benefits, necessity, regulatory and economic impact of, and possible modifications to, the FTC’s Guides for the Jewelry, Precious Metals, and Pewter Industries.

**DATES:** Comments must be received on or before August 27, 2012.

**ADDRESSES:** Interested parties may file comments online or on paper by following the instructions in the Request for Comments 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 or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex O), 600 Pennsylvania Avenue NW, Washington, DC 20580.

**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:

### I. Background

The Guides for the Jewelry, Precious Metals, and Pewter Industries (“Jewelry Guides” or “Guides”) address claims made about precious metal, pewter, diamond, gemstone, and pearl products. 16 CFR Part 23. The Guides explain how to avoid making deceptive claims and, for certain products, discuss when disclosures should be made to avoid unfair or deceptive trade practices.<sup>1</sup>

The Commission completed its last comprehensive review of the Jewelry Guides in 1996, and has modified the Guides four times since. As a result of the 1996 review, the Commission: consolidated certain provisions of the former Watch Band Guides with the Jewelry Guides; added new provisions, such as those regarding use of the terms vermeil and pewter, and the disclosure of certain treatments to diamond and gemstone jewelry products; and eliminated or substantively revised several existing provisions.<sup>2</sup> Additionally, in 1997, the Commission revised Section 7 of the Guides regarding platinum products, to simplify and align its guidance more closely with international standards.<sup>3</sup> In 1999, the Commission amended the Guides to

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<sup>1</sup> The Commission issues industry guides to help the industry conduct its affairs in conformity 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 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.

<sup>2</sup> *Federal Trade Commission: Guides for the Metallic Watch Band Industry and Guides for the Jewelry Industry: Final guides*, 61 FR 27178 (May 30, 1996). As part of these changes, the industry guides formerly known as “Guides for the Jewelry Industry” were renamed “Guides for the Jewelry, Precious Metals, and Pewter Industries.”

<sup>3</sup> *Federal Trade Commission: Guides for the Jewelry, Precious Metals, and Pewter Industries: Final guides*, 62 FR 16669 (Apr. 8, 1997).

remove a footnote reference to the Watch Guides, which it had rescinded earlier.<sup>4</sup> In response to petitions from jewelry trade associations, the Commission again revised the Guides in 2000 to provide for disclosure of permanent gemstone treatments that significantly affect the value of the gemstone, such as the laser-drilling of diamonds.<sup>5</sup> In 2010, the Commission amended Section 7 regarding platinum to provide guidance on how to mark and describe non-deceptively certain platinum alloys.<sup>6</sup>

## **II. Regulatory Review Program**

Since 1992, the Commission has systematically reviewed all its regulations and guides to ensure that they continue to achieve their intended goals without unduly burdening commerce. The Commission schedules its regulations and guides for review on a ten-year cycle; *i.e.*, all rules and guides are scheduled to be reviewed ten years after implementation and ten years after the completion of each review. The Commission publishes this schedule annually, with adjustments in response to public input, changes in the marketplace, and resource demands.<sup>7</sup>

When the Commission reviews a rule or guide, it publishes a notice in the Federal Register seeking public comments on the continuing need for the rule or guide, as well as its costs and benefits to consumers and businesses. Based on this feedback, the Commission may

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<sup>4</sup> *Federal Trade Commission: Guides for the Jewelry, Precious Metals, and Pewter Industries: Revision of the Guides for the Jewelry, Precious Metals, and Pewter Industries*, 64 FR 33193 (June 22, 1999).

<sup>5</sup> *Federal Trade Commission: Guides for the Jewelry, Precious Metals, and Pewter Industries: Final guides*, 65 FR 78738 (Dec. 15, 2000).

<sup>6</sup> *Federal Trade Commission: Guides for the Jewelry, Precious Metals, and Pewter Industries: Final Guides Amendments*, 75 FR 81443 (Dec. 28, 2010).

<sup>7</sup> Since completing its last review of the Jewelry Guides in 1996, the Commission revised sections of the Guides and addressed other issues raised in petitions from jewelry trade associations. The Commission therefore scheduled the Guides for another comprehensive review in 2011, but postponed it due to resource constraints. *Federal Trade Commission: Notice Announcing Ten-Year Regulatory Review Schedule and Request for Public Comment on the Federal Trade Commission's Regulatory Review Program*, 76 FR 41150 (Jul. 13, 2011).

modify or repeal the rule or guide to address public concerns or changed conditions, or to reduce undue regulatory burden. As part of this review process, the Commission now solicits comments on, among other things: the regulatory and economic impact of, and the continuing need for, the Jewelry Guides; the benefits of the Guides to businesses and consumers; the burdens the Guides place on businesses; possible conflict between the Guides and state, local, or other federal laws; and the effect on the Guides of any technological, economic, or other industry changes.<sup>8</sup>

### **III. Specific Issues**

Inquiries received by Commission staff in recent years suggest that technological developments and related changes in industry standards and practice may affect certain provisions of the Jewelry Guides. Some inquiries also indicate that modifying the Commission's consumer and business education materials could improve industry and consumer understanding of the Guides. Accordingly, the Commission seeks comments on these issues as outlined below, as well as comments regarding any other issues or concerns relating to the Guides.

First, the increased marketing of stones comprising a mixture of ruby/corundum and lead-glass has raised issues concerning how such products are advertised and sold. These composite stones (which are sometimes referred to as "composite rubies," "hybrid rubies," or "glass-filled rubies") may contain a considerable percentage of lead-glass. Moreover, the method that produces these stones may differ significantly from the techniques traditionally used to treat or enhance natural rubies (*e.g.*, various treatments involving the application of heat). Informal inquiries received by staff have questioned whether a lead-glass-filled composite stone can accurately be identified as a natural ruby or gem, even when disclosures are made that the stone

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<sup>8</sup> See questions 1 through 12 in Section IV below.

has been treated. The Commission seeks comments on whether it should amend the Guides to address this development and, if so, how.

Second, the current Guides do not specifically address use of the term “cultured” to describe industry products created in a laboratory or factory that have essentially the same optical, physical, and chemical properties of natural gemstones. In connection with petitions submitted by several jewelry industry trade groups in 1986 and 2006, the Commission considered proposals to amend the Guides to state that it is deceptive or unfair to describe such products as “cultured.” After reviewing the record, the Commission determined there was insufficient evidence to conclude that using “cultured” in reference to laboratory-created diamonds or other laboratory-created gemstones would be either deceptive or unfair if marketers reasonably and effectively qualified the term as suggested in Section 23.23.<sup>9</sup> The Commission now seeks additional evidence on this issue.

Third, the Commission seeks comments regarding several issues relating to pearls. Specifically, the Commission seeks comments on whether it should amend the Guides to address disclosures concerning freshwater pearls. Comments submitted in the 1996 review suggested that use of the term “cultured” in reference to freshwater pearls would create confusion because consumers tended to associate the term “cultured pearls” with pearls that were round, and freshwater pearls were often irregularly-shaped and smaller than other cultured pearls. Since then, developments in the culturing process have effected changes in the shape, size, quality, and color of the resulting product, such that freshwater cultured pearls may, in many respects, resemble saltwater cultured pearls in appearance. The Commission thus seeks comments on whether it should amend the Guides to recommend any specific disclosures relating to freshwater

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<sup>9</sup> See FTC letter of July 21, 2008 declining to amend the Guides with respect to use of the term “cultured,” available at <http://www.ftc.gov/os/2008/07/G711001jewelryguides.pdf>.

pearls. In addition, the Commission seeks comments on whether the Guides should advise the disclosure of treatments to pearl products, such as dyeing techniques that artificially color the final product.

Fourth, the Commission seeks comments on whether the Guides should provide particular guidance on how to describe non-deceptively the content of alloys and alloy products that contain precious metals in amounts that fall below the minimum thresholds reflected in the current Guides. Specifically, Section 23.4 provides that it may be misleading to use the word gold or any abbreviation, or a quality mark implying gold content, to describe all or part of an industry product that is composed throughout of an alloy of gold that is less than 10 karats. Similarly, Section 23.6 provides that it is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as silver unless it is at least 925/1,000ths pure silver, and Section 23.7 reflects a minimum of at least 500 parts per thousand pure platinum for use of the word platinum or related abbreviation to describe all or part of an industry product. The Commission seeks comments on whether it should amend the Guides to provide guidance on how to describe non-deceptively the content of alloys and alloy products that contain less than 10 karats of gold, less than 925/1,000ths silver, or less than 500 parts per thousand platinum.

#### **IV. Request for Comments**

The Commission solicits comments on the following specific questions related to the Jewelry Guides:

- (1) Is there a continuing need for the Guides as currently promulgated? Why or why not?
- (2) What benefits have the Guides provided to, or what significant costs have the Guides imposed on, consumers? Provide any evidence supporting your position.
- (3) What modifications, if any, should the Commission make to the Guides to increase their benefits or reduce their costs to consumers?

- (a) How would these modifications affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses?
  - (b) Provide any evidence supporting your proposed modifications.
- (4) What impact have the Guides had in promoting the flow of truthful information to consumers and preventing the flow of deceptive information to consumers? Provide any evidence supporting your position.
- (5) What benefits, if any, have the Guides provided to, or what significant burdens or costs, including costs of compliance, have the Guides imposed on businesses that conform to their advice, particularly small businesses? Provide any evidence supporting your position.
- (6) What modifications, if any, should be made to the Guides to increase their benefits or reduce their burdens or costs to businesses that conform to their advice, particularly small businesses?
  - (a) How would these modifications affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses?
  - (b) Provide any evidence supporting your proposed modifications.
- (7) Provide any evidence concerning the degree of industry compliance with the Guides. Does this evidence indicate that the Guides should be modified? If so, why and how? If not, why not?
- (8) Provide any evidence concerning whether any of the Guides' provisions are no longer necessary. Explain why these provisions are unnecessary.
- (9) What potentially unfair or deceptive practices concerning precious metal, pewter, diamond, gemstone, or pearl products are occurring in the marketplace, but not covered by the Guides?
  - (a) With reference to such practices, should the Guides be modified? If so, why and how? If not, why not?
  - (b) Provide any evidence, such as empirical data, consumer perception studies, or consumer complaints, demonstrating the extent of such practices.
  - (c) Provide any evidence demonstrating whether such practices cause consumer injury.
- (10) What modifications, if any, should be made to the Guides to account for current or impending changes in technology or economic conditions affecting the jewelry and precious metals industries?"

- (a) How would these modifications affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses?
  - (b) Provide any evidence supporting the proposed modifications.
- (11) Do the Guides overlap or conflict with other federal, state, or local laws or rules, such as those enforced by U. S. Customs and Border Protection? If so, how?
  - (a) With reference to the asserted conflicts, should the Guides be modified? If so, why and how? If not, why not?
  - (b) Have the Guides assisted in promoting national consistency with respect to precious metal, pewter, diamond, gemstone, and pearl products?
  - (c) Provide any evidence supporting your position.
- (12) Are there foreign or international laws, regulations, or standards with respect to precious metal, pewter, diamond, gemstone, or pearl products that the Commission should consider as it reviews the Guides? If so, what are they?
  - (a) Should the Guides be modified in order to harmonize with these international laws, regulations, or standards? If so, why and how? If not, why not?
  - (b) How would such harmonization affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses?
  - (c) Provide any evidence supporting your position.
- (13) Are there any provisions in the Guides setting forth particular requirements that do not accurately and fairly reflect the accepted customs, practices, and patterns of dealing prevalent in the industry, including the terminology and nomenclature customarily used in the course of trade?
  - (a) If so, identify these provisions and describe the extent and effects of such differences in requirements.
  - (b) Provide any evidence supporting your position.
- (14) To what extent, if any, does the method that produces stones comprising a mixture of ruby/corundum and lead-glass (which are sometimes referred to as “composite rubies,” “hybrid rubies,” or “glass-filled rubies”) differ from techniques traditionally used to treat or enhance natural rubies (*e.g.*, glass-filling at fractures or surface fissures, application of high heat resulting in glass residue at surface-reaching cracks, in-filling with oils)?

- (a) What impact, if any, does this have on the grade, quality, size, weight, cut, color, character, substance, durability, serviceability, price, value, special care requirements, or any other material aspect of the resulting product?
  - (b) Do lead-glass-filled composite stones have essentially the same optical, physical, and chemical properties as natural rubies? If not, how are they different?
  - (c) Provide any evidence supporting your position.
- (15) To the extent lead-glass-filled composite stones are marketed and sold as “rubies” or other “natural” gemstones without qualification, is there any evidence of consumer misperception or injury resulting from the practice? If so, please provide it.
- (16) Is there a standard or consensus in the industry regarding how lead-glass-filled composite stones are identified and described?
  - (a) Provide any evidence demonstrating the extent to which the industry standard meets or fails to meet consumer expectations regarding such products.
- (17) Should the Guides be amended to address lead-glass-filled composite stones?
  - (a) Describe what guidance is needed to ensure that consumers are not misled about the composition of lead-glass-filled composite stones and these products’ performance, durability, value, and any special care requirements.
  - (b) Would the proposed guidance affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses? If so, how?
  - (c) Provide any evidence supporting your position.
- (18) Are there any treatments or enhancements performed on rubies or other gemstone products, such as fracture-filling, that are disclosed in accordance with Sections 23.1 and 23.22 of the Guides, but are still likely to deceive consumers?
  - (a) If so, how common are these practices?
  - (b) Should the Jewelry Guides include specific guidance regarding how these treatments should be disclosed to consumers? If so, what guidance should be provided?
  - (c) Would the proposed guidance affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses? If so, how?

- (d) Provide any evidence supporting your position, including evidence demonstrating the extent of such practices and evidence of any consumer confusion or injury.
- (19) Does use of the term “cultured,” together with qualifying terms such as “laboratory-created,” “laboratory-grown,” [manufacturer name]-created,” or “synthetic,” to describe laboratory-created diamonds or other gemstones that are optically, chemically, and physically equivalent to natural, mined stones of the type identified create confusion among consumers or cause consumer injury?
- (a) Provide any evidence supporting your position.
- (20) Should the Guides be amended to address specifically whether and in what circumstances the term “cultured” may be used to describe diamonds or other gemstone products? If so, what guidance should be provided?
- (a) Would the proposed guidance affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses? If so, how?
  - (b) Provide any evidence supporting your position.
- (21) Should the Guides include a provision in Section 23.20 to address the circumstances in which the term “freshwater pearl” may be used in a manner that is not unfair or deceptive? If so, what guidance should be provided?
- (a) Would the proposed guidance affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses? If so, how?
  - (b) Provide any evidence supporting your position.
- (22) Should the Guides advise the disclosure of treatments to pearl products, such as dyeing or other artificial coloring techniques? If so, what types of disclosures should be made?
- (a) Are there any treatments to pearl products that are not permanent?
  - (b) Are there any treatments to pearl products that create special care requirements?
  - (c) Is there a disparity in value between a pearl that has been treated in a manner that is permanent and does not create special care requirements, and a pearl that has not been treated?
  - (d) Would the issuance of guidance calling for the disclosure of treatments to pearl products affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses? If so, how?
  - (e) Provide any evidence supporting your position.

- (23) Should the Guides be amended to provide guidance on how to describe non-deceptively the content of precious metal alloys and alloy products that contain less than the minimum standard amounts (*i.e.*, 10 karats for gold, 925/1,000ths for silver, 500 parts per thousand for platinum)? If so, what guidance should be provided?
- (a) Would the proposed guidance affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses? If so, how?
  - (b) Provide any evidence supporting your position.
- (24) Are the Commission's business compliance guidance and consumer education materials about the Jewelry Guides useful? Can they be improved? If so, how?
- (a) Should the Commission consider consumer education or other measures to help non-English-speaking consumers obtain the information provided under the Guides?
  - (b) Should the Commission print copies of business compliance guidance and consumer education materials, or is a pdf at [www.ftc.gov](http://www.ftc.gov) sufficient for your needs?

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 27, 2012. Write "Jewelry Guides, 16 CFR Part 23, Project No. G711001" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission website. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually-identifiable health information. In

addition, do not include any “trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>10</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. Accordingly, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/jewelrystudiesreview> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that website.

If you file your comment on paper, write “Jewelry Guides, 16 CFR Part 23, Project No. G711001” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex O), 600 Pennsylvania Avenue NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

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<sup>10</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Visit the Commission website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 27, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy at <http://www.ftc.gov/ftc/privacy.htm>.  
By direction of the Commission.

Donald S. Clark  
Secretary.

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