the committee: *Provided*, That each shipper who ships less than 10,000 trays, or the equivalent thereof, per fiscal year and has qualified with the committee shall furnish such report of shipment and inventory data to the committee twice per fiscal year. The first report shall be due no later than January 5 and the final report no later than the fifth day of the following month after such shipment is completed for the season, or such other later times established by the committee. Such report shall show:

(1) The reporting period;

(2) the name and other identification of the shipper;

(3) the number of containers by type and weight by shipment destination category;

(4) inventory at the end of the reporting period by container, and with respect to flats, the size of the kiwifruit;

(5) the amount of kiwifruit lost in repack; and

(6) the amount of fruit set aside for processing.

(b) *Kiwifruit Inventory Shipping System (KISS) form*. Each handler, except such handlers that ship less than 10,000 trays, or the equivalent thereof, per season and have qualified with the committee, shall file with the committee the initial Kiwifruit Inventory Shipment System (KISS) form, which consists of three sections ''KISS/Add Inventory,'' ''KISS/Deduct Inventory,'' and ''KISS/Shipment,'' on or before December 5th, or such other later time as the committee may establish.

* * * * *

Dated: September 27, 1996.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–25280 Filed 10–2–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Boundaries of the Cordell Bank National Marine Sanctuary; Correction

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correcting amendment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is correcting a discrepancy in the coordinates of the Cordell Bank National Marine Sanctuary, California.

EFFECTIVE DATE: October 3, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Moore at (301) 713–3141.

SUPPLEMENTARY INFORMATION: The Cordell Bank National Marine Sanctuary (CBNMS or Sanctuary) was designated in 1989. SRD issued final regulations, effective August 9, 1989, that included the coordinates of the boundary of the CBNMS (15 CFR part 922, subpart K, Appendix A). NOAA recently became aware of a minor discrepancy in the boundary coordinates of the Sanctuary: one boundary coordinate was erroneously duplicated at Points No. 27 and No. 29. This notice corrects that discrepancy by deleting Point No. 27 and re-numbering the boundary points that follow. Neither the actual boundary nor the area of the Sanctuary are affected by this correction.

NOAA has decided to make this document effective immediately because public comment and delayed effective date are not necessary due to the minimal nature of the correcting amendment.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 23, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

PART 922—[AMENDED]

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Appendix A to subpart K of part 922 is revised to read as follows:

Appendix A to Subpart K of Part 922—Cordell Bank National Marine Sanctuary Boundary Coordinates

Point No.	Latitude	Longitude
1	38°15′51.72″	123°10′52.44″
2	38°07′55.88″	123°38′33.53″
3	38°06′45.21″	123°38′00.40″
4	38°04′58.41″	123°37′14.34″
5	38°04′28.22″	123°37′17.83″
6	38°03′42.75″	123°36′55.66″
7	38°03′11.10″	123°36′19.78″
8	38°02′46.12″	123°36′21.98″
9	38°02′02.74″	123°35′56.56″
10	38°01′27.10″	123°35′55.12″
11	38°01′22.28″	123°36′55.13″
12	38°01′11.54″	123°37′28.21″
13	38°00′49.16″	123°37′29.77″
14	37°59′54.49″	123°36′47.90″
15	37°59′12.39″	123°35′59.55″
16	37°58′39.40″	123°35′14.85″
17	37°58′00.57″	123°34′42.93″
18	37°57′18.99″	123°33′43.15″
19	37°56′56.42″	123°32′51.97″
20	37°56′18.90″	123°32′49.24″
21	37°55′22.37″	123°32′36.96″
22	37°54′26.10″	123°32′21.73″
23	37°53′07.46″	123°31′46.81″
24	37°52′34.93″	123°31′18.90″
25	37°51′42.81″	123°31′19.10″
26	37°50′59.58″	123°31′02.96″
27	37°49′22.64″	123°29′34.07″
28	37°48′49.14″	123°28′44.61″
29	37°48′36.95″	123°28′08.29″
30	37°48′03.37″	123°28′23.27″
31	37°47′41.54″	123°28′01.97″
32	37°47′01.78″	123°27′16.78″
33	37°46′51.92″	123°26′48.98″
34	37°46′13.20″	123°26′04.79″
35	37°46′00.73″	123°25′36.99″
36	37°50′25.31″	123°25′26.53″
37	37°54′32.28″	123°23′16.49″
38	37°57′45.71″	123°19′17.72″
39	37°59′29.27″	123°14′12.16″
40	37°59′43.71″	123°08′27.55″
41	38°03′10.20″	123°07′44.35″
42	38°04′01.64″	123°06′58.92″
43	38°08′33.32″	123°04′56.24″
44	38°12′42.06″	123°07′10.21″

[FR Doc. 96–25152 Filed 10–2–96; 8:45 am]

BILLING CODE 3510–08–M

FEDERAL TRADE COMMISSION

16 CFR Part 24

Guides for Select Leather and Imitation Leather Products

AGENCY: Federal Trade Commission.

ACTION: Final rule; Final Guides for Select Leather and Imitation Leather Products.

SUMMARY: The Federal Trade Commission (the ''Commission''), as part of its periodic review of its rules and guides, announces that it has concluded a review of its proposed Guides for Select Leather and Imitation Leather Products (''proposed Guides''), which combined and amended the provisions of Guides for the Luggage and Related Products Industry, the Guides for Shoe Content Labeling and Advertising, the Guides for the Ladies' Handbag Industry and the Commission's Trade Regulation Rule Concerning Misbranding and Deception as to Leather Content of Waist Belts. The Commission has decided to adopt the proposed Guides, modified as discussed below.

EFFECTIVE DATE: The effective date of this rule is December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Susan E. Arthur, Attorney, (214) 767–

5503, Federal Trade Commission, Dallas Regional Office, 100 N. Central Expressway, Suite 500, Dallas, Texas 75201.

SUPPLEMENTARY INFORMATION:

I. Background

On September 18, 1995, the Commission rescinded the Guides for the Luggage and Related Products Industry (''Luggage Guides''), the Guides for Shoe Content Labeling and Advertising (''Shoe Content Guides''), and the Guides for the Ladies' Handbag Industry (''Handbag Guides''). 60 FR 48027 (September 18, 1995). On the same day, the Commission sought public comment on proposed Guides for Select Leather and Imitation Leather Products. 60 FR 48056 (September 18, 1995). The proposed Guides combined relevant portions of the three Guides, updated certain language used in the Guides, and made other modifications to clarify and streamline the provisions of the Guides. The Commission included within the coverage of the proposed combined Guides certain provisions of the Commission's Trade Regulation Rule Concerning Misbranding and Deception as to Leather Content of Waist Belts, 16 CFR Part 405 (''Waist Belt Rule'').[1]

The request for public comment contained questions designed to assist the Commission in determining whether the proposed Guides should be expanded in scope and to allow interested parties to apprise the Commission of any special considerations for their industries. The questions were as follows:

1. Should the proposed Guides for Select Leather and Imitation Leather Products be expanded in scope to include other products made of leather or imitation leather? Such products might include, but are not limited to, clothing, furniture, watchbands, and equestrian items.

2. Are there special considerations for these or other leather or imitation leather goods which are not addressed by the proposed Guides? How could any such special considerations be addressed by the Guides?

II. Comments Received

Nine comments were received in response to this request for public comment. Additionally, the Commission received two Waist Belt Rule comments in response to an advance notice of proposed rulemaking published on September 18, 1995. Previously, the Commission had received 12 comments in response to its March 27, 1995 Federal Register notice on the three individual Guides and 10 comments on the Waist Belt Rule (all but three of the Waist Belt Rule comments were also submitted in response to the request for comment on the three Guides). Because the Waist Belt Rule comments concern the same or similar issues as those under consideration in this proceeding, they have been considered in this review.

In its September 18, 1995 Federal Register notice, the Commission addressed the first set of comments on the three Guides and the Waist Belt Rule, which had been received in response to its March 27, 1995 Federal Register notice. The Commission now addresses the comments received in response to the September 18, 1995 Federal Register notice and will refer to the first set of comments where appropriate or necessary to the discussion.[2]

In conducting this review, the Commission also examined the European Union Directive 94/11/EC, which applies to footwear. The Directive has as its objective informing consumers of the contents of their shoes, which is different from the Guides' aim of preventing misrepresentation caused by the appearance of leather. However, to enhance global harmonization, the Commission has, where appropriate, incorporated some of the concepts of the Directive into the Guides.

A. Comments Concerning the Usefulness of the Guides

The proposed Guides are premised on the Commission's long-standing position that a product that looks like leather makes an implied representation that the product is made of leather. The Commission received a number of comments which indicated a need for the Guides. One comment, however, stated that the proposed Guides are at odds with current Commission law and policy and urged the Commission to abandon the Guides as they apply to shoes and boots.[3] This comment also said that the proposed Guides convert silence about shoe content into an ''appearance of leather'' misrepresentation and then require disclosure to cure that misrepresentation.

Specifically, the Footwear Distributors and Retailers of America argues that the proposed Guides deal with conduct that is not prohibited under modern FTC deception law. The association cites *International Harvester Co.*, 104 F.T.C. 949 (1984), as setting forth the circumstances under which the Commission will apply deception theory to omissions: (1) where the seller fails to disclose information necessary to prevent an affirmative statement from creating a misleading impression, and (2) where the seller remains silent under circumstances which constitute an implied but false representation. *International Harvester*, however, also states that a deceptive omission can arise from the physical appearance of a product, and cites as authority a case in which the Commission upheld charges against a seller who failed to disclose that a simulated wood product was actually paper. *Haskelite Mfg. Corp.*, 33 F.T.C. 1212, 1216 (1941), *aff'd*, 127 F.2d 765 (7th Cir. 1942). The proposed

[1] The Commission recently repealed the Waist Belt Rule. 61 FR 25560 (May 22, 1996).

[2] Comments Received in Response to the March 27, 1995 Federal Register Notice.

Concerning the Three Guides:

1. Rose E. Kettering (''REK''). Same comment sent regarding Waist Belt Rule
2. Matt Anderson (''MA''). Same comment sent regarding Waist Belt Rule.
3. Marilyn Raeth (''MR''). Same comment sent regarding Waist Belt Rule.
4. James A. McGarry (''JAM''). Same comment sent regarding Waist Belt Rule.
5. Lenna Mae Gara (''LMG''). Same comment sent regarding Waist Belt Rule.
6. Linda D. Lipinski (''LDL'').
7. Footwear Industries of America (''FIA'').
8. Leather Industries of America, Inc. (''LIA''). Same comment sent regarding Waist Belt Rule.
9. Luggage and Leather Goods Manufacturers of America, Inc. (''LLGMA'').
10. Cromwell Leather Company, Inc. (''CL''). Same comment sent regarding Waist Belt Rule.
11. Enger Kress (''EK'').
12. Footwear Distributors and Retailers of America (''FDRA'').

Concerning the Waist Belt Rule:

13. Stephen Toso (''ST'').
14. Humphreys, Inc. (''HI'').
15. Enger Kress (''EK2'').

Comments Received in Response to the September 18, 1995 Federal Register Notice.

Concerning the Proposed Guides:

16. Ecological Fibers, Inc. (''EFI'').
17. Leather Industries of America (''LIA2''). Addendum dated January 11, 1996 (''LIA3''). Addendum dated January 18, 1996 (''LIA4'').
18. Fried, Frank, Harris, Shriver & Jacobson (''FFHSJ'').
19. Footwear Industries of America (''FIA2''). Addendum dated January 25, 1996, to Susan Arthur (''FIA3''). Addendum dated January 25, 1996, to Secretary's Office (''FIA4''). Addendum dated January 30, 1996 (''FIA5'').
20. Footwear Distributors and Retailers of America (''FDRA2'').
21. Cromwell Leather Company, Inc. (''CL2'').
22. People for the Ethical Treatment of Animals (''PETA'').
23. Hong Kong Government Industry Department (''HK'').
24. Luggage and Leather Goods Manufacturers of America (''LLGMA2'').

Concerning the Waist Belt Rule:

24. Humphreys, Inc. (''HI2'').
25. Larry Gundersen (''LG'').

[3] FDRA2, #20 at 2.

Guides are designed to correct the same type of omission as that in *Haskelite*. Both cases provide support for the underlying premise of the Guides.

The Footwear Distributors and Retailers of America also cites *Thompson Medical*, 104 F.T.C. 648, (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987) and *Leonard Porter*, 88 F.T.C. 546, (1976), as support for the proposition that a product appearing to be leather does not make an implied representation concerning the material from which the product is made. In *Thompson Medical*, the Commission said that if an initial review does not permit it to conclude with confidence that an implied message exists, it will not find the implied claim unless extrinsic evidence (consumer surveys, expert testimony) allows it to conclude that such a reading is reasonable. In *Leonard Porter*, the Commission found that consumers would not generally assume that certain souvenirs were handmade in Alaska by natives. The Commission said that, simply from the appearance of the items, it could not conclude that the items possessed the capacity to deceive as to their origin and method of manufacture.[4] With regard to the appearance of leather and the potential resulting content representation created by that appearance, however, a visual examination of the item is sufficient to determine whether a representation is made. Extrinsic evidence is unnecessary to determine the existence of the claim.

The Footwear Distributors and Retailers of America comment also expresses a belief that new high-tech synthetics are far superior to the synthetics used in the early 1960's, ''offering the appearance, comfort, breathability, durability, and other qualities that are comparable or superior to leather.'' The organization believes that the performance and value of the shoe, not the materials used, drive consumer choice. Further, Footwear Distributors and Retailers of America states that consumers do not assume that footwear is made of leather nor do they care about the exact materials used in shoes.

The Commission believes that leather content representations likely are material to consumers. Two consumers who responded to the first request for comment indicated a belief that imitation leather, when used in shoes, may cause feet to sweat excessively.[5] Another stated that animal lovers, vegetarians and others who do not wish to wear leather need to know what they are buying.[6] Two other comments from the first set of comments indicated that the requirements of the Guides assist consumers in making purchasing decisions.[7] Although the Footwear Distributors and Retailers of America comment contends that these consumer comments are anecdotal evidence which should be rejected, the Commission believes that they demonstrate a desire on the part of consumers to be informed of the nature of a product and that this desire is common to a substantial number of consumers.

It seems likely that the appearance of leather in a synthetic material may be a representation that the product is leather. Further, price or other factors are unlikely to signal to consumers that a product which appears to be leather is not.[8] Products made from synthetics that look like leather, especially synthetic athletic shoes, are often priced the same as similar products made of leather.

In addition, the Guides trigger disclosures for non-leather materials only when a product appears to be leather and is not. Many synthetics are intentionally made to simulate the look of leather, apparently because many consumers prefer leather. Other synthetic products, however, are clearly and visibly synthetic, and for such products disclosure requirements would not be triggered. Thus, the application of the Guides is properly limited to situations where consumers are likely to be misled about a product's true composition.

In sum, it seems likely that that the appearance of leather in a non-leather product constitutes a representation that a product is leather. Consumers have come to rely upon the information provided pursuant to the Guides, and if the Commission did not adopt the proposed Guides, it is likely that confusion in the marketplace would result.

B. Comments Concerning Products Covered by the Guides

The request for comment on the proposed Guides contained questions related to (1) expansion of the Guides to include other types of products made of leather or imitation leather and (2) any special considerations for such products not addressed by the proposed Guides. For the reasons discussed below, the Commission has decided not to expand the Guides to cover additional types of products.

A number of comments received in response to the first Federal Register notice concerning the three individual Guides addressed the expansion issue. One comment said that a single set of guides should cover all leather-using industries.[9] Another stated that the Guides could be generalized to many, if not all, industries.[10] Leather Industries of America suggested that a set of leather definitions be developed to apply to all finished goods.[11] The Luggage and Leather Goods Manufacturers of America stated, however, that it did not endorse combining the Guides because of the special circumstances in other industries.[12] None of the second set of comments concerning the proposed Guides expressed any views on whether the Guides should be expanded to include additional products.

Other than the request for special consideration of footwear contained in the Footwear Distributors and Retailers of America comment discussed above, only one comment from the second set of comments requested any special consideration for certain products. This comment came from a company which supplies paper and cover products to the bookbinding and looseleaf industry. The comment requested an exclusion for material thinner than 10/1000th of an inch, provided that the material is identified by some name which indicates the presence of non-leather ingredients (the company suggests the term ''reinforced bonded leather'') and that the material is used as covering material.[13] No such exclusion has been incorporated into the Guides as adopted. The leather appearance of the product, rather than its thickness, makes a representation to consumers. Further, as addressed below, use of the term ''bonded leather'' is sanctioned by the proposed Guides, provided that appropriate disclosures are made.

While there are some arguments for broadening the Guides, they are not compelling. The record developed during this review does not provide sufficient support to justify expansion of the Guides. There are still many unanswered questions regarding the extent to which misrepresentations are made in other industries, how

[4] The Commission also said that complaint counsel's extrinsic consumer evidence did not appear to be representative either of current conditions or of any substantial segment of consumers and did not support a need for disclosures.

[5] REK, #1; MA, #2 at 2.

[6] LMG, #5.

[7] MR, #3 and JAM, #4.

[8] In contrast, consumers are unlikely to confuse a gold-toned product with real gold when the ''pretender'' sells for a fraction of the amount that gold items typically cost.

[9] CL, #10 at 1.

[10] EK, #11 at 2.

[11] LIA, #8 at 4–5.

[12] LLGMA, #9 at 2.

[13] EFI, #16 at 2.

consumers would interpret the appearance of leather for products in other industries, and whether there are special considerations for other industries. Thus, the Commission has decided that the Guides should not be expanded to cover additional products.[14] Nevertheless, all industries which utilize leather and imitation leather can obtain valuable guidance from the Guides. Because the Guides are interpretive of laws enforced by the Commission, these industries may obtain useful information from the Guides even though they are not specifically covered. Further, although other industries may not be within the coverage of the Guides, the Commission is in no way prevented from otherwise taking action against a company engaged in deceptive omissions.

C. Suggested Changes to the Guides

A number of the comments received in response to the second request for comment suggested that certain changes be made to the proposed Guides. Generally, these suggestions fall into the following categories: (1) Use of the term ''Leather,'' (2) Multi-material Shoes, (3) Disclosure Requirements, (4) Concealed Innersoles, (5) Use of the term ''Bonded Leather,'' (6) Use of the term ''Waterproof,'' and (7) Deletion of Unnecessary Provisions.

1. Use of the Term ''Leather''

Split leather is the leather which results from the splitting of hides or skins into two or more thicknesses, other than the grain or hair side. Top grain leather is the grain or hair side. As published for comment, the proposed Guides provided for use of the term ''leather'' only when the material is top grain leather. Originally, the distinction was retained because of apparent differences between the performance and appearance of top grain leather and that of split leather, as well as possible consumer expectations with regard to these materials. Upon further consideration, the Commission has decided that the term ''leather'' would also be appropriate for split leather products.

The European Union Directive 94/11/EC, which applies to footwear, allows split leather to be called ''leather'' without qualification.[15] For this reason, two comments from the first set of comments urged that the Guides be amended to allow split leather to be called ''leather.''[16] The comments suggested that technological advances have resulted in a split leather which is superior to that produced years ago. In support of preservation of the Guides' distinction between top grain and split leather, however, one of the first set of comments stated that split grain is less expensive, less attractive, and less durable than top grain leather, and that split leather is subject to ''crocking.''[17] Another of that set of comments stated that the Guides should continue to permit only top grain leather to be called ''leather'' or ''genuine leather'' and that other forms of leather should include qualifying words.[18]

One of the second set of comments reasoned that top grain leather is in fact a split—albeit the top grain split—of a cowhide or sheep-skin.[19] Further, the comment stated that top grain leathers are noted for their exceptionally low tear strength and structural weakness. The comment also said that it could be argued that there is no application where splits could not visually and physically replace or substitute top grain leathers, but that the reverse would not apply. The commenter stated that for use on the products its client manufactures, appointment books and diaries, splits are preferable for their strength characteristics and their blemish-free surface. Since these products are enhanced by use of split leather, the comment states that it would not be unfair or deceptive to represent that the products are leather, but that it would detract from the marketing of the products to refer to them as anything other than leather.[20]

Rather than relying upon the performance characteristics of split leather and top grain leather, the Commission believes that consumer understanding and the messages conveyed to consumers should be the focus in deciding whether to permit use of the term ''leather'' to describe split leather. Footwear Distributors and Retailers of America commented that there is no reason to assume that consumers distinguish between top grain and split leather.[21] Another comment requested modification of the proposed Guides to accurately reflect consumer acceptance of split leather.[22] The Commission believes that it is reasonable to assume that consumers do not perceive a distinction between ''leather'' and ''split leather'' and that consumers do not assume that ''leather'' means only ''top grain leather.'' Indeed, the relevant definition of leather is the ''dressed or tanned hide of any animal, usually with the hair removed.''[23] If the Guides are modified to allow split leather to be called ''leather,'' manufacturers of top grain leather would be free to label their products as ''top grain leather'' if they so choose. It is likely that a number of top grain leather product manufacturers already label their products in this manner. If consumers are aware of any difference in the quality of various types of leather, the term ''top grain'' will likely convey more useful information to consumers than will the term ''split.''

Based on the European Union position on split leather and the representation that the Commission believes is made to consumers by use of the term ''leather,'' the Commission deletes from the Guides the provision stating that only top grain leather can be called leather without qualification. Furthermore, the provision requiring disclosure of the presence of split leather and other references to the term ''split leather'' are deleted.

2. Multi-Material Shoes

Footwear Distributors and Retailers of America suggested that the proposed Guides should be more flexible with regard to multi-material footwear.[24] The proposed Guides stated that if all or part of a shoe is non-leather with the appearance of leather, the general nature of the material or the fact that the material is not leather should be disclosed.[25] The proposed Guides also stated that a product which is made principally of leather but which has

[14] The provision concerning the scope of the Guides is modified in that the term ''footwear'' is substituted for the enumeration of footwear items.

[15] Under the European Union directive, leather which has a surface coating thicker than 0.15 mm cannot be called ''leather.'' Leather with a surface coating which does not exceed one third of the thickness of the material but is greater than 0.15 mm must be referred to as ''coated leather.'' The proposed Guides do not address coating materials because such materials were not addressed in the original Guides, and there is insufficient record evidence regarding practices in the United States upon which to base guidance about coatings.

[16] LIA, #8 at 4; FDRA, #12 at 3. FDRA restated this position in its second comment.

[17] FIA, #7 at 2. The comment stated that crocking is the transfer of color from the surface of a colored material to an adjacent area of the same material or to another surface, principally by rubbing. In its second comment, Footwear Industries of America again supported qualification of split leather because of differences in the performance and appearance of split leather and top grain leather.

[18] CL, #10 at 1.

[19] FFHSJ, #18 at 1.

[20] Alternatively, the comment requested a clarification of the scope of the Guides to make clear that the Guides do not apply to the company's products.

[21] FDRA2, #20 at 3.

[22] FFHSJ, #18 at 1.

[23] The American Heritage Dictionary, Houghton Mifflin Company, Third Edition (1992).

[24] FDRA2, #20 at 4.

[25] Under the proposed Guides as published for comment, the composition of heels, stiffenings, and ornamentation was not considered when making the determination of whether a shoe, boot, or slipper may be called ''leather.''

non-leather parts with the appearance of leather may be described as leather as long as there is a disclosure of the non-leather parts. Given the current design of footwear, it may have been necessary in order to comply with the proposed Guides to disclose the composition of a number of different parts of a shoe. Such a lengthy disclosure may have been cumbersome to manufacturers and confusing to consumers.

The EU Directive on Footwear states that labels shall provide information on only three parts of a shoe: the upper, the lining and sock, and the outersole.[26] The Commission believes that such a limitation is appropriate to prevent costly and cumbersome disclosures. Consequently, a footnote has been added to the Guides indicating that footwear is considered to be composed of these three parts.

Footwear Distributors and Retailers of America suggest allowing use of a more flexible disclosure if a footwear part is composed of both leather and non-leather materials. For example, if the majority of the upper is leather, the following term would be used: ''leather and manmade upper.'' If leather is not the majority of the material: ''upper of manmade and leather materials.'' Because such disclosures would inform consumers that the upper of a shoe is not entirely leather and would prevent deception, a footnote has been added to the Guides which states that, with regard to footwear, it is sufficient to disclose the presence of non-leather materials in the upper, the lining and sock, or the outersole, provided that the disclosure is made according to the predominance of materials. An example similar to the one mentioned above has also been added.

3. Disclosure Requirements

People for the Ethical Treatment of Animals stated that its members, because of their ethical concerns, need labels affixed to products which accurately identify the material from which the product is made. The organization suggests that all *leather* products be labeled ''Animals Suffered to Make This Product'' and that all non-leather products be labeled ''Cruelty-free Product.'' The aim of the Guides is to prevent misrepresentation of leather content. The disclosures provided in the proposed Guides accomplish this goal. The disclosures suggested by People for the Ethical Treatment of Animals are not appropriate in the context of the Guides.

4. Concealed Innersoles

The proposed Guides currently state that shoes with visible parts having the appearance of leather but containing non-leather concealed innersoles should bear a disclosure of the composition of the innersoles.[27] Initially, the Commission believed that insufficient evidence of consumer beliefs had been presented to warrant removal of this provision. On further consideration, however, the Commission now has decided that disclosure of the composition of concealed innersoles is not needed.

Comments from two trade associations addressed this issue. Footwear Industries of America objected to the Guides' not being limited to uppers and outersoles, the two main components of a shoe upon which the association believes consumers base their purchasing decisions.[28] The comment said that innersoles are typically covered with a sock lining or insole sock which conceals the innersole and separates it from the foot, so consumers are not deceived into thinking it is leather. Footwear Distributors and Retailers of America argued that the concealed innersole disclosure should be deleted given the absence of any empirical evidence that consumers care about concealed innersoles.[29] The comment also said that consumers should not have any expectations at all about a part of the shoe which is not seen.

Footwear Industries of America stated that leather innersoles do not guarantee better performance, and that leather is no longer being used in this manner.[30] The comment states that leather innersoles crack and break during flexing movements due to the effects of perspiration acids and humidity. The comment also estimates that less than 1% of the 1.6 billion pairs of shoes sold annually in the U.S. have a leather innersole, and that most are cellulose board. The association also provided information to indicate that cellulose board can outperform leather in a number of respects, including dimensional stability, porosity, and thermal conductivity.[31] The information provided also indicates that the material is lighter in weight than leather and has a lower Ph factor than leather.

As discussed above, with regard to footwear, the coverage of the Guides has been limited to the three main parts of footwear. Therefore, the provision regarding concealed innersoles has been deleted. A concealed innersole does not make any implied representation to consumers and, therefore, no disclosure of the content of concealed innersoles is necessary.[32]

5. Use of the Term ''Bonded Leather''

In drafting the proposed Guides, the Commission considered a number of comments concerning use of the term ''bonded leather,'' which generally refers to material made of leather fibers held together with a bonding agent. Although the original three Guides did not mention the term ''bonded leather,'' they addressed this type of material, which is also called ''ground leather,'' ''pulverized leather,'' or ''shredded leather.'' The Shoe Content Guides and the Ladies' Handbag Guides allowed either a disclosure stating that the material is simulated or imitation leather or that the material is ground, pulverized, or shredded leather. The Luggage Guides stated that an accurate representation as to the ground, pulverized or shredded leather content of the material could be made, but that if the material had the appearance of being leather a disclosure must be made in accordance with the imitation leather provision of the Luggage Guides. The example given in the Luggage Guides contains a disclosure that shredded leather fibers are contained in the material, but that rubber adhesive and vinyl are also contained in the material. The Luggage Guides provide that consumers should be made aware of the different components in this type of material. The history of this issue was considered in drafting the proposed Guides, which state that if the term ''bonded leather'' is used (or if similar terms such as ''ground leather,'' ''pulverized leather,'' or ''shredded leather'' are used), a disclosure of the percentage of leather fiber and of the

[26] The European Union Directive defines these three parts of a shoe as follows: (1) the upper is the outer face of the structural element which is attached to the outersole; (2) the lining and sock are the lining of the upper and the insole, constituting the inside of the footwear article; and (3) the outersole is the bottom part of the footwear article subjected to abrasive wear and attached to the upper.

According to the Directive, labels must disclose the material which constitutes at least 80% of the surface area of the upper, 80% of the surface area of the lining and sock, and at least 80% of the volume of the outersoles. The Guides have not been modified to conform with the European Union Directive with respect to the 80% figure.

[27] Concealed innersoles are the portion of a shoe hidden between the liner and the outersole of a shoe.

[28] FIA2, #19 at 1. Footwear Industries of America also made this argument in its first comment.

[29] FDRA2, # 20 at 3. In its first comment, the organization stated that the Guides should not apply to concealed innersoles because consumers expect that the concealed portions of footwear bottoms, particularly innersoles, are made of synthetic material.

[30] FIA2, #19 at 2.

[31] FIA5, #19 at 1.

[32] As indicated above, the European Union Directive does not apply to concealed innersoles.

percentage of non-leather substances contained in the product should be made.

One of the comments expressed support for the proposed Guides' treatment of this issue.[33] Another comment suggested that this material should be called ''reinforced bonded leather'' rather than simply ''bonded leather'' in order to put the public on notice that there are other ingredients in the material.[34] A comment regarding the Waist Belt Rule suggested that the term ''bonded leather'' should be permitted to be used unconditionally.[35] The Commission concludes, however, that use of the terms ''bonded leather'' or ''reinforced bonded leather'' without further information is likely to confuse consumers as to leather content, and the best way to avoid such confusion is to include the disclosures as provided by the Guides.

Another commenter supported using the term ''bonded leather'' but did not think the additional content information as provided by the Guides was the best solution.[36] Cromwell Leather believed that a qualifying word before the term ''leather'' (such as ''bonded'' or ''split'') will keep the Guides simple, yet effective, and suggests that ongoing education will increase consumer understanding of the qualifying terms. The comment stated that the proposed Guides' disclosure requirement for bonded leather will create additional costs and cause confusion because some manufacturers get bonded leather from more than one supplier. The company believes there should be a 75% leather fiber minimum for use of the term ''bonded leather'' (without further qualification). The comment states that there is widespread industry agreement on the 75% figure.

As discussed in response to the first set of comments, however, even if the 75% figure were an industry practice or standard, it would not prevent deception. In one of the original comments regarding the Waist Belt Rule, consumer survey evidence was provided in support of use of the term ''bonded leather.''[37] The data provided indicates that some consumers may be misled by use of the term. Further, the term may be interpreted to mean that the material is of greater quality than leather,[38] or is strengthened or reinforced leather. Without the qualifying information contained in the Guides, the term ''bonded leather'' may not inform consumers that non-leather fibers are contained in the material.

The ecological benefits of using the term ''bonded leather'' (namely, encouraging the use of leather scrap or recycled leather fiber) are also addressed in the second set of comments. One of the comments urges the Commission to reconsider the decision not to require a minimum leather content for use of the term ''bonded leather'' because ecological benefits are subverted.[39] Another comment urging a minimum threshold for use of the term stated that permitting any amount of leather fibers to be called ''bonded leather'' may diminish the use of recycled leather fibers and reverse the ecological progress the industry has made.[40] Whether recycling goals are affected by use of the term ''bonded leather'' or not, consumers should be made aware of the contents of such material.

One of the second set of comments urged the Commission to require a minimum leather content for use of the term ''bonded leather'' since consumers may not read fine print.[41] The Guides already contain a provision regarding the form of disclosures which should prevent any ''fine print'' from being used to mislead consumers. This provision states that the disclosures affixed to products and made in advertising should be conspicuous and clear and should be in close conjunction with the representation necessitating the disclosure.

In summary, the Commission believes that consumers should be made aware of the contents of bonded leather and similar materials. The Guides' treatment of this issue accomplishes this objective. One change has been made to the ''bonded leather'' provision. The term ''reconstituted leather'' has been added to the section concerning use of the terms ground, pulverized, shredded, and bonded leather. Apparently, this term is often used interchangeably with ''bonded leather.''

6. Use of the Term ''Waterproof''

A number of comments expressed concern about the provision in the proposed Guides which relates to the term ''waterproof'' because the Guides provide for use of the term only if an item is impermeable to water.[42] The comments argue that a product can be waterproof without being totally impermeable to water. New technology waterproofs leather by chemically modifying the leather fibers. Use of this material in footwear allows air molecules to pass through while preventing larger water molecules from reaching the foot. Total impermeability is not desirable since the ability of leather to breathe is a form of permeability. Leather Industries of America proposed the following modification:

It is unfair or deceptive to:

(a) Use the term ''Waterproof'' to describe all or part of an industry product unless the designated product or material prevents water from contact with its contents under normal conditions of intended use during the anticipated life of the product or material.[43]

Due to changes in technology and consumer acceptance of the modern waterproofing methods, the waterproof provision has been modified as contained in Leather Industries of America's suggestion.

7. Deletion of Unnecessary Provisions

The proposed Guides stated that it is unfair or deceptive to misrepresent that a product is colored, finished, or dyed with aniline dye. One of the comments expressed concern about this provision.[44] Leather Industries of America stated that ''aniline leather'' is universally used in the industry in a non-chemical sense to describe leather that is finished without pigment coverage. The association believes that the term does not imply that the leather has been dyed with an aniline dye, only that the finish is clear and contains no pigment. Because the term ''aniline'' now refers to a clear finish which allows the surface to be seen, the Commission has removed the provision in the proposed Guides relating to aniline dye.

The same provision also deals with misrepresentations that a product is dyed, embossed, grained, processed, finished, or stitched in a certain manner. Such misrepresentations would fall within the general deception provision and do not need to be contained in a specific provision.

Although no comments were received regarding the ''fictitious animal'' provision in the proposed Guides, this provision has also been deleted. Any representation that a product is made from the skin or hide of an animal that

[33] FIA2, #19 at 1.

[34] EFI, #16 at 2.

[35] HI2, #24 at 1.

[36] CL2, #21 at 1.

[37] HI, #14, part 6.

[38] EK, #11 at 3 and letter dated February 3, 1964, to the Commission from counsel for the Tanners' Council of America at 10–11.

[39] LIA2, # 17 at 1.

[40] CL2, #21 at 2.

[41] LIA2, #17 at 1.

[42] LLGMA2, #24 at 1, LIA3, #17 at 1, LIA4, #17 at 1, FIA4, #19 at 1.

[43] LIA3, #17 at 1. Footwear Industries of America and Luggage and Leather Goods Manufacturers of America each submitted a somewhat similar proposal, without reference to the anticipated life of the product.

[44] LIA2 at 1.

does not exist would clearly fall within the general deception provision of the Guides.

III. Conclusion

A number of changes to the Guides have been made based upon the second set of comments. The final Guides incorporate the following modifications:

—The scope of the Guides has been modified to use the term ''footwear'' instead of a list of footwear items, and the term ''footwear'' is used as appropriate throughout the Guides.

—The provision stating that only top grain leather can be called leather without qualification is modified. The provision requiring disclosure of the presence of split leather and other references to the term ''split leather'' have been deleted.

—The provision regarding concealed innersoles has been deleted.

—With regard to footwear, the Guides have been modified to state that for purposes of the Guides, footwear is composed of three parts: the upper, the lining and sock, and the outersole. A footnote has been added which says that with regard to footwear, it is sufficient to disclose the presence of non-leather materials in the upper, the lining and sock, or the outersole, provided that the disclosure is made according to predominance of materials.

—The term ''reconstituted leather'' has been added to the provision dealing with use of the terms ground, pulverized, shredded, or bonded leather.

—The provision concerning use of the term ''waterproof'' has been modified to allow the term to be used if a product or material prevents water from contact with its contents under normal conditions of intended use during the anticipated life of the product or material.

—The provision relating to misrepresentation that a product has been dyed with aniline dye and other specific misrepresentations has been deleted.

—The ''fictitious animal'' provision has been deleted as unnecessary.

List of Subjects in 16 CFR Part 24

Advertising, Clothing, Distribution, Footwear, Imitation-leather products, Labeling, Ladies' handbags, Leather and leather products industry, Luggage and related products, Shoes, Trade practices, Waist belts.

Accordingly, 16 CFR Part 24 is added to read as follows:

PART 24—GUIDES FOR SELECT LEATHER AND IMITATION LEATHER PRODUCTS

Sec.
24.0 Scope and purpose of guides.
24.1 Deception (general).
24.2 Deception as to composition.
24.3 Misuse of the terms ''waterproof,'' ''dustproof,'' ''warpproof,'' ''scuffproof,'' ''scratchproof,'' ''scuff resistant,'' or ''scratch resistant.''

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

§ 24.0 Scope and purpose of guides.

(a) The Guides in this part apply to the manufacture, sale, distribution, marketing, or advertising of all kinds or types of leather or simulated-leather trunks, suitcases, traveling bags, sample cases, instrument cases, brief cases, ring binders, billfolds, wallets, key cases, coin purses, card cases, French purses, dressing cases, stud boxes, tie cases, jewel boxes, travel kits, gadget bags, camera bags, ladies' handbags, shoulder bags, purses, pocketbooks, footwear, belts (when not sold as part of a garment) and similar articles (hereinafter, ''industry products'').

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

§ 24.1 Deception (general).

It is unfair or deceptive to misrepresent, directly or by implication, the kind, grade, quality, quantity, material content, thickness, finish, serviceability, durability, price, origin, size, weight, ease of cleaning, construction, manufacture, processing, distribution, or any other material aspect of an industry product.

§ 24.2 Deception as to composition.

It is unfair or deceptive to misrepresent, directly or by implication, the composition of any industry product or part thereof. It is unfair or deceptive to use the unqualified term ''leather'' or other unqualified terms suggestive of leather to describe industry products unless the industry product so described is composed in all substantial parts of leather.[1] This section includes, but is not limited to, the following:

(a) *Imitation or simulated leather.* If all or part of an industry product is made of non-leather material that appears to be leather, the fact that the material is not leather, or the general nature of the material as something other than leather, should be disclosed. For example: Not leather; Imitation leather; Simulated leather; Vinyl; Vinyl coated fabric; or Plastic.

(b) *Embossed or processed leather.* The kind and type of leather from which an industry product is made should be disclosed when all or part of the product has been embossed, dyed, or otherwise processed so as to simulate the appearance of a different kind or type of leather. For example:

(1) An industry product made wholly of top grain cowhide that has been processed so as to imitate pigskin may be represented as being made of Top Grain Cowhide.

(2) Any additional representation concerning the simulated appearance of an industry product composed of leather should be immediately accompanied by a disclosure of the kind and type of leather in the product. For example: Top Grain Cowhide With Simulated Pigskin Grain.

(c) *Backing material.* (1) The backing of any material in an industry product with another kind of material should be disclosed when the backing is not apparent upon casual inspection of the product, or when a representation is made which, absent such disclosure, would be misleading as to the product's composition. For example: Top Grain Cowhide Backed With Vinyl.

(2) The composition of the different backing material should be disclosed if it is visible and consists of non-leather material with the appearance of leather, or leather processed so as to simulate a different kind of leather.

(d) *Misuse of trade names, etc.* A trade name, coined name, trademark, or other word or term, or any depiction or device should not be used if it misrepresents, directly or by implication, that an industry product is made in whole or in part from animal skin or hide, or that

[1] For purposes of these Guides, footwear is composed of three parts: the upper, the lining and sock, and the outersole. These three parts are defined as follows: (1) The upper is the outer face of the structural element which is attached to the outersole; (2) the lining and sock are the lining of the upper and the insole, constituting the inside of the footwear article; and (3) the outersole is the bottom part of the footwear article subjected to abrasive wear and attached to the upper.

material in an industry product is leather or other material. This includes, among other practices, the use of a stamp, tag, label, card, or other device in the shape of a tanned hide or skin or in the shape of a silhouette of an animal, in connection with any industry product that has the appearance of leather but that is not made wholly or in substantial part from animal skin or hide.

(e) *Misrepresentation that product is wholly of a particular composition.* A misrepresentation should not be made, directly or by implication, that an industry product is made wholly of a particular composition. A representation as to the composition of a particular part of a product should clearly indicate the part to which the representation applies.[2] Where a product is made principally of leather but has certain non-leather parts that appear to be leather, the product may be described as made of leather so long as accompanied by clear disclosure of the non-leather parts. For example:

(1) An industry product made of top grain cowhide except for frame covering, gussets, and partitions that are made of plastic but have the appearance of leather may be described as: Top Grain Cowhide With Plastic Frame Covering, Gussets and Partitions; or Top Grain Cowhide With Gussets, Frame Covering and Partitions Made of Non-Leather Material.

(2) An industry product made throughout, except for hardware, of vinyl backed with cowhide may be described as: Vinyl Backed With Cowhide (See also disclosure provision concerning use of backing material in paragraph (c) of this section).

(3) An industry product made of top grain cowhide except for partitions and stay, which are made of plastic-coated fabric but have the appearance of leather, may be described as: Top Grain Cowhide With Partitions and Stay Made of Non-leather Material; or Top Grain Cowhide With Partitions and Stay Made of Plastic-Coated Fabric.

(f) *Ground, pulverized, shredded, reconstituted, or bonded leather.* A material in an industry product that contains ground, pulverized, shredded, reconstituted, or bonded leather and thus is not wholly the hide of an animal should not be represented, directly or by implication, as being leather. This provision does not preclude an accurate representation as to the ground, pulverized, shredded, reconstituted, or bonded leather content of the material. However, if the material appears to be leather, it should be accompanied by either:

(1) An adequate disclosure as described by paragraph (a) of this section; or

(2) If the terms ''ground leather,'' ''pulverized leather,'' ''shredded leather,'' ''reconstituted leather,'' or ''bonded leather'' are used, a disclosure of the percentage of leather fibers and the percentage of non-leather substances contained in the material. For example: An industry product made of a composition material consisting of 60% shredded leather fibers may be described as: Bonded Leather Containing 60% Leather Fibers and 40% Non-leather Substances.

(g) *Form of disclosures under this section.* All disclosures described in this section should appear in the form of a stamping on the product, or on a tag, label, or card attached to the product, and should be affixed so as to remain on or attached to the product until received by the consumer purchaser. All such disclosures should also appear in all advertising of such products irrespective of the media used whenever statements, representations, or depictions appear in such advertising which, absent such disclosures, serve to create a false impression that the products, or parts thereof, are of a certain kind of composition. The disclosures affixed to products and made in advertising should be of such conspicuousness and clarity as to be noted by purchasers and prospective purchasers casually inspecting the products or casually reading, or listening to, such advertising. A disclosure necessitated by a particular representation should be in close conjunction with the representation.

§ 24.3 Misuse of the terms ''waterproof,'' ''dustproof,'' ''warpproof,'' ''scuffproof,'' ''scratchproof,'' ''scuff resistant,'' and ''scratch resistant.''

It is unfair or deceptive to:

(a) Use the term ''Waterproof'' to describe all or part of an industry product unless the designated product or material prevents water from contact with its contents under normal conditions of intended use during the anticipated life of the product or material.

(b) Use the term ''Dustproof'' to describe an industry product unless the product is so constructed that when it is closed dust cannot enter it.

(c) Use the term ''Warpproof'' to describe all or part of an industry product unless the designated product or part is such that it cannot warp.

(d) Use the term ''Scuffproof,'' ''Scratchproof,'' or other terms indicating that the product is not subject to wear in any other respect, to describe an industry product unless the outside surface of the product is immune to scratches or scuff marks, or is not subject to wear as represented.

(e) Use the term ''Scuff Resistant,'' ''Scratch Resistant,'' or other terms indicating that the product is resistant to wear in any other respect, unless there is a basis for the representation and the outside surface of the product is meaningfully and significantly resistant to scuffing, scratches, or to wear as represented.

By direction of the Commission.

Donald S. Clark,

Secretary.

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[2] With regard to footwear, it is sufficient to disclose the presence of non-leather materials in the upper, the lining and sock, or the outersole, provided that the disclosure is made according to predominance of materials. For example, if the majority of the upper is composed of manmade material: Upper of manmade materials and leather.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 91C–0189]

Listing of Color Additives for Coloring Contact Lenses; 1,4-Bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester copolymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of the colored reaction products formed by copolymerizing 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-propenoic)ester either with glyceryl methacrylate/methyl methacrylate/ethylene glycol dimethacrylate monomers or with *N,N*-dimethyl acrylamide/methyl methacrylate/ethylene glycol dimethacrylate monomers to form contact lenses. This action is in response to a petition filed by Sola/Barnes-Hind.

DATES: Effective November 5, 1996, except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by November 4, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration,