Although the Commission is eliminating the Free Film Guide, proceedings still may be brought against businesses under section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), for engaging in unfair or deceptive acts or practices in or affecting commerce in the advertising and sale of these products and services. EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert J. Schroeder, Seattle Regional Office, Federal Trade Commission, 915 Second Avenue, Suite 2806, Seattle, Washington, 98174, (206) 220–6350.

SUPPLEMENTARY INFORMATION:

I. Introduction

As a part of its ongoing project to review all rules and guides, the Commission has evaluated the continued need for the Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Service. The same deceptive practices described in the Free Film Guide and the same industry guidance on how to avoid them in this specific industry also appear in the more general Guide Concerning Use of the Word "Free" and Similar Representations, 16 CFR part 251. Accordingly, the Commission has determined to repeal the Free Film

Because the industry guidance in the Free Film Guide is duplicated in the Guide Concerning Use of the Word "Free" and Similar Representations, the Commission has further determined that public comment is not necessary at this time.¹ Public comment on the issues raised by offers of "free" merchandise or services may be sought at a later date during regulatory review of the Guide Concerning Use of the Word "Free" and Similar Representations.

II. Background

On June 5, 1968, the Commission adopted the Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and

Film Processing Service.² The Free Film Guide describes various deceptive practices that may be associated with offers of "free" film in connection with the sale of photographic processing services, and provides industry guidance on how to avoid these types of deception. On November 10, 1971, the Commission adopted the Guide Concerning Use of the Word "Free" and Similar Representations.3 This guide describes various deceptive practices that may be associated with offers of "free" merchandise or services of any kind, and provides industry guidance on how to avoid these types of deception. The **Federal Register** Notice announcing it specifically states that provisions of all existing guides and trade practice rules that include coverage of use of the term "Free" or similar representations will be construed in the light hereof." 4 The two guides describe essentially the same deceptive practices and give essentially the same guidance.

III. Review of the Guide

The content of the Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Service is repeated, in slightly different language but to the same effect, in the Guide Concerning Use of the Word "Free" and Similar Representations. Thus the Free Film Guide has been supplanted and is no longer needed.

The Free Film Guide generally proscribes representing that film is provided free with the purchase of processing service when that is not the case. The guide states:

Film processors should avoid representing film as "free" [in connection with the purchase of processing service] when their quoted price for processing is not their regular price for such service. * * * A regular price is the price at which an article or service is openly and actively sold by the advertiser to the public on a regular basis for a reasonably substantial period of time in the recent and regular course of business.⁵

The Guide Concerning Use of the Word "Free" and Similar Representations contains the same general proscription in slightly different language:

[W]hen the purchaser is told that an article is "Free" to him if another article is purchased, the word "Free" indicates that he is paying nothing for that article and no more than the regular price for the other. * * * The term "regular" when used with the term "price", means the price, in the same

quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold the product or service * * * in the most recent and regular course of business, for a reasonably substantial period of time, i.e., a 30-day period.6

Both guides expound that consumers understand "free" offers to mean that the price of the processing, or other article that must be purchased, has not been increased to cover the cost of the "free" film or other article. Both guides counsel that introductory offers should not include a representation of "free" film or other article unless the offeror expects, in good faith, to discontinue the offer after a limited time and commence selling the processing service, or other article that must be purchased, separately at the same price at which it was promoted with the "free" offer.8 Both guides further provide that "free" offers should not be continuous or frequent.9

Two provisions of the Free Film Guide, while not having specific counterparts in the Guide Concerning Use of the Word "Free" and Similar Representations, are implicitly contained in the more general language of that guide. The first is the statement that a processor has no basis for a "free" film representation where it has not established a regular price for processing service by itself (except in the case of introductory offers). 10 This is implicit in the discussion of the regular price requirement in both guides. The second is the caveat that the Free Film Guide is not intended to preclude the use of nondeceptive "combination" offers of film and processing where there is no representation that one of the items is "free". 11 There is nothing in either guide to suggest that such offers would be precluded because the guides, by their terms, apply only to use of the word "free" and similar terms.

The Free Film Guide has been supplanted by the Guide Concerning Use of the Word "Free" and Similar Representations. Accordingly, the Commission has determined that it is in the public interest to eliminate the Free Film Guide.

List of Subjects in 16 CFR Part 242

Advertising, Photographic industry, Trade practices.

¹ The Administrative Procedure Act requires that interpretive rules, such as guides, be published in their final form in the Federal Register. 5 U.S.C. 552(a)(1)(D). It does not require the opportunity for public participation in the issuance or repeal of interpretive rules. 5 U.S.C. 553(b). As a matter of discretion, however, the Commission generally seeks public comment on proposed actions involving industry guides. In this case, the Commission has determined such comment is unnecessary.

² 33 FR 8336.

³ 36 FR 21517.

⁴ Id.

^{5 16} CFR 242.1(b).

⁶ 16 CFR 251.1(b)(1)–(b)(2).

⁷¹⁶ CFR 242.1(c); 16 CFR 251.1(b)(1).

^{8 16} CFR 242.1(f); 16 CFR 251.1(f).

^{9 16} CFR 242.1(e); 16 CFR 251.1(h).

^{10 16} CFR 242.1(d).

^{11 16} CFR 242.1(g).