

revealed that the occurrence was caused by a loose bolt of the "V" shape airbrake bellcrank, named hereafter intermediate control lever. The Left Hand (LH) wing lever also presented, to a lesser extent, a loose bolt.

This AD requires inspection of the LH and RH wing airbrake intermediate control levers for loose attaching bolts and subsequent repetitive inspections and corrective actions, as necessary. As a terminating action, replacement of the bolts and their associated washers is required.

These actions are intended to address the identified unsafe condition so as to prevent loss of the airbrake control system which could result in an inadvertent forced landing with consequent sailplane damage and/or passenger injury.

#### Requirements Retained From AD 2008-02-09

(f) Do the following unless already done:

(1) Within 10 days after February 1, 2008 (the effective date of AD 2008-02-09), inspect the left-hand (LH) and the right-hand (RH) wing airbrake intermediate control levers for loose attaching bolts following Allstar PZL Glider Sp. z o. o. Service Bulletin No. BE-059/SZD-50-3/2007 "PUCHACZ," dated October 15, 2007.

(2) Before further flight after the inspection required in paragraph (f)(1) of this AD, if any loose bolt is found, replace the split helical spring lock washers with tab washers and replace the M8x34 bolts with M8x32 bolts on both wings following Allstar PZL Glider Sp. z o. o. Service Bulletin No. BE-059/SZD-50-3/2007 "PUCHACZ," dated October 15, 2007. After doing this replacement, no further action is required by this AD.

#### New Requirements of This AD: Actions and Compliance

(g) If no loose bolts are found in the initial inspection required in paragraph (f)(1) of this AD, repetitively inspect thereafter at intervals not to exceed 100 hours time-in-service (TIS) or 12 months, whichever occurs first, until you are required to do the replacement in paragraph (h) or (i) of this AD. Do the inspection following Allstar PZL Glider Sp. z o. o. Service Bulletin No. BE-059/SZD-50-3/2007 "PUCHACZ," dated October 15, 2007.

(h) If any loose bolt is found during any inspection required in paragraph (g) of this AD, before further flight replace the split helical spring lock washers with tab washers and replace the M8x34 bolts with M8x32 bolts on both wings following Allstar PZL Glider Sp. z o. o. Service Bulletin No. BE-059/SZD-50-3/2007 "PUCHACZ," dated October 15, 2007. After doing this replacement, no further action is required by this AD.

(i) Within the next 1,000 hours TIS after the effective date of this AD, replace the split helical spring lock washers with tab washers and replace the M8x34 bolts with M8x32 bolts on both wings following Allstar PZL Glider Sp. z o. o. Service Bulletin No. BE-059/SZD-50-3/2007 "PUCHACZ," dated October 15, 2007. After doing this replacement, no further action is required by this AD.

#### FAA AD Differences

**Note:** This AD differs from the MCAI and/or service information as follows: No differences.

#### Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329-4130; *fax:* (816) 329-0409. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(k) Refer to MCAI European Aviation Safety Agency (EASA) Emergency AD No. 2007-0275-E, dated October 24, 2007; and Allstar PZL Glider Sp. z o. o. Service Bulletin No. BE-059/SZD-50-3/2007 "PUCHACZ," dated October 15, 2007, for related information.

Issued in Kansas City, Missouri, on February 20, 2008.

**Patrick R. Mullen,**

*Acting Manager, Small 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 (FTC or Commission).

**ACTION:** Request for public comment on a proposed amendment to the platinum section of the Guides for the Jewelry, Precious Metals, and Pewter Industries.

**SUMMARY:** The Commission is seeking comments on a proposed amendment to

the platinum section of the FTC's Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR part 23. The amendment provides guidance on how to mark or describe non-deceptively products containing at least 500 parts per thousand, but less than 850 parts per thousand, pure platinum and no other platinum group metals. The Commission is also seeking comment on whether the Guides for the Jewelry, Precious Metals, and Pewter Industries should be revised to provide guidance on how to mark or describe platinum-clad, filled, plated, or overlay products.

**DATES:** Written comments must be received on or before May 27, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "Jewelry Guides, Matter No. G711001" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two copies, to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H (Annex E), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area, and at the Commission, is subject to delay due to heightened security precautions.

Because U.S. postal mail is subject to delay due to heightened security measures, please consider submitting your comments in electronic form. Comments filed in electronic form (except comments containing any confidential material) should be submitted by clicking on the following: <https://secure.commentworks.com/ftc-jewelry> and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at <https://secure.commentworks.com/ftc-jewelry>. If this

<sup>1</sup> Commission Rule 4.2(d), 16 CFR 4.2 (d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Notice appears at <http://www.regulations.gov>, you may also file an electronic comment through that website. The Commission will consider all comments that [regulations.gov](http://www.regulations.gov) forwards to it.

The FTC Act and other laws 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, whether filed in paper or electronic form. Comments will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:** Robin Rosen Spector, Attorney, (202) 326-3740, or Janice Podoll Frackle, Attorney, (202) 326-3022, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Guides for the Jewelry, Precious Metals, and Pewter Industries ("Jewelry Guides" or "Guides") address claims made about precious metals, diamonds, gemstones, and pearl products. 16 CFR part 23. The Jewelry Guides provide guidance on how to avoid making deceptive claims and, for certain products, discuss when disclosures should be made to avoid unfair or deceptive trade practices. The Commission is seeking public comment on Section 23.7 of the Jewelry Guides, which addresses claims for platinum products.

Industry guides are administrative interpretations of the application of Section 5 of the FTC Act, 15 U.S.C. 45(a). The Commission issues industry guides to provide guidance for the public to conform with legal requirements. 16 CFR part 17. Failure to follow industry guides may result in corrective action under Section 5 of the FTC Act. In any such enforcement action, the Commission must prove that the act or practice at issue is unfair or deceptive.

Platinum products marketed as "platinum" typically contain at least

85% pure platinum or contain at least 50% pure platinum in combination with other platinum group metals ("PGM") that total 95% PGM.<sup>2</sup> During the last few years, some manufacturers have marketed products as "platinum" that contain more than 50%, but less than 85%, pure platinum, and no other PGM.<sup>3</sup> In a **Federal Register** notice published July 6, 2005 ("2005 FRN"),<sup>4</sup> the Commission sought comment on whether it should revise the platinum section of the Jewelry Guides to address such products. The comment period closed October 12, 2005.

**II. Background**

The platinum section of the Jewelry Guides contains a general statement regarding the deceptive use of the term "platinum" (and other PGM) and provides specific examples of misleading and non-violative uses of the term "platinum."<sup>5</sup> Specifically, Section 7(a) of the Jewelry Guides states that it is "unfair or deceptive to use the words 'platinum,' 'iridium,' 'palladium,' 'ruthenium,' 'rhodium,' and 'osmium,' 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." 16 CFR 23.7(a).

Section 7(b) provides examples of markings or descriptions for products containing platinum that may be misleading:

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

(2) 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."

(3) Use of the word "Platinum" or any abbreviation thereof, to mark or describe any product that is not composed

<sup>2</sup> The Platinum Group Metals include platinum, iridium, palladium, ruthenium, rhodium, and osmium.

<sup>3</sup> We are aware that some companies are selling similar products but marketing them under names other than "platinum."

<sup>4</sup> 70 FR 38834 (July 6, 2005).

<sup>5</sup> On April 8, 1997 (62 FR 16669), the Commission published the current platinum section of the Jewelry Guides. The Commission revised this section as part of a comprehensive review of all of the provisions of the Guides.

throughout of at least 500 parts per thousand pure Platinum. 16 CFR 23.7(b).

Section 7(c) includes the following four 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 . . . [section lists the two-letter and four-letter abbreviations for the PGM].

(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. . . . 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." 16 CFR 23.7(c).

On December 15, 2004, Karat Platinum, a jewelry manufacturer, requested an opinion from the FTC staff regarding the application of the Jewelry Guides to a product called "Karat Platinum" consisting of 585 parts per thousand ("ppt") pure platinum and 415 ppt copper and cobalt (non-precious metals).<sup>6</sup> The request stated that the company's reading of the Guides indicated that the platinum section did not prohibit marking or describing the product as "Platinum" and that the Guides did not address how to mark or describe an alloy with this composition other than to require that any representation be truthful and not misrepresent the product's composition.

The staff posted this request on the FTC's website on December 17, 2004 and invited the industry to provide comments by January 5, 2005.<sup>7</sup> The staff

<sup>6</sup> The request for a staff opinion and the staff's response to that request can be found at [www.ftc.gov/os/statutes/jewelry/letters/karatplatinum.pdf](http://www.ftc.gov/os/statutes/jewelry/letters/karatplatinum.pdf) and [www.ftc.gov/os/statutes/jewelry/letters/karatplatinum002.pdf](http://www.ftc.gov/os/statutes/jewelry/letters/karatplatinum002.pdf), respectively.

<sup>7</sup> The staff later extended the comment period until January 10, 2005.

received sixteen comments from jewelry trade associations and retailers.<sup>8</sup>

On February 2, 2005, the staff responded to the request for an opinion stating:

The Guides provide that, in order for a product to be marked or described as “platinum,” the product must contain a minimum of 500 ppt pure platinum. 16 CFR § 23.7(b)(3). In addition, the Guides provide that, if a product contains 500 ppt pure platinum but less than 850 ppt pure platinum, the marketer must disclose the amount in ppt of the remaining PGM in the product. 16 CFR § 23.7(b)(2).

In our opinion, a literal reading of the Guides indicates that they do not address the marketing of the Karat Platinum alloy, except to the extent that they require a minimum of 500 ppt pure platinum. The provisions of Section 23.7 that address misuse of the word “platinum” do not discuss how to mark or describe an alloy that contains over 500 ppt pure platinum but no other PGM.

The staff letter further explained that the marketing of the Karat Platinum alloy would be subject to Section 23.1 of the Guides, which contains a general statement on deception, as well as Section 5 of the FTC Act.<sup>9</sup>

The letter stated that the staff considered “this alloy to be sufficiently different in composition from products consisting of platinum and other PGM to require clear and conspicuous disclosure of the differences.” The staff letter also stated that it did not appear “that simple stamping of the jewelry’s content (*e.g.*, 585 Plat., 0 PGM) would be sufficient to alert consumers to the differences between the Karat Platinum alloy and platinum products containing other PGM.”

Because of the public interest in this issue, on July 6, 2005, the Commission issued a **Federal Register** notice soliciting public comment regarding whether it should revise the Guides to address products composed of at least 500 ppt, but less than 850 ppt, pure platinum and no other PGM. The Commission received comments

through the extended October 12, 2005 deadline.<sup>10</sup>

Additionally, the notice stated that the staff had received some inquiries regarding the application of the platinum section of the Guides to the marketing of platinum-clad or platinum-coated jewelry products. The platinum section of the Guides currently does not address platinum-clad, filled, plated, or overlay products. Other sections of the Guides, however, address gold and silver-plated jewelry products.<sup>11</sup> These sections generally advise that the plating must be of a sufficient thickness to ensure reasonable durability. The 2005 FRN, therefore, also sought comment regarding whether the Guides should provide guidance on how to mark or describe non-deceptively platinum-clad, filled, coated, or overlay jewelry products. The Commission received several comments with regard to this issue stating that there is a need for guidance for platinum-coated or plated products with respect to the thickness of the coating and the purity of the platinum.<sup>12</sup> Because these comments did not propose specific guidance, this **Federal Register** notice is seeking such guidance with regard to platinum-clad, filled, coated, and overlay jewelry products.

### III. Response to June 2005 Notice Seeking Comment on the Platinum Section of the Jewelry Guides

#### A. Summary of Comments

The FTC received 62 comments in response to the 2005 FRN. The FRN requested comments on two main issues—first, should the platinum section of the Guides be amended to address jewelry products containing at least 500 ppt, but less than 850 ppt, pure platinum and no other PGM (“platinum/base metal alloy”); second, if guidance is appropriate, what should the guidance provide. With regard to the first issue, the majority of the comments recommend that the Commission revise the Guides to include guidance regarding appropriate markings or descriptions for platinum/base metal alloy jewelry products. A joint comment from several jewelry trade associations<sup>13</sup>

(hereinafter “JVC”) states that “[i]ndustry members universally believe that the Guides should be revised to address products that contain 500-850 ppt pure platinum and no other PGM. Since products employing this alloy (and others) have become available, clarity in marking and description standards for these products is needed.”<sup>14</sup> Similarly, a comment from Platinum Guild International (“PGI”) recommends that “the FTC amend the Platinum Guides and provide for an unambiguous and transparent standard.”<sup>15</sup> The majority of the comments from jewelry retailers support the JVC and PGI recommendations.<sup>16</sup>

Karat Platinum’s comment takes a contrary position. Karat Platinum asserts that the Commission does not need to amend the Guides because the existing guidance in the platinum section, combined with the staff opinion letter issued in February 2005,<sup>17</sup> adequately inform marketers how to mark or describe such products.

With regard to the second issue, commenters disagree about the guidance the Commission should provide for the marketing of platinum/base metal alloy jewelry. The JVC and PGI comments argue that the Commission should revise the Guides to prohibit marketers from marking or describing platinum/base metal alloy jewelry as “platinum” entirely.<sup>18</sup> JVC and PGI assert that

<sup>14</sup> JVC comment at 3.

<sup>15</sup> PGI comment at 24.

<sup>16</sup> The following comments recommend that the Commission revise the Guides to include guidance regarding products contain 500 ppt, but less than 850 ppt, pure platinum and no other PGM: Kwiat; Albert Malky, Inc.; John A. Green (Lux Bond & Green); Loyd Stanley (Stanley Jewelers Gemologist); JCK Publishing; Traditional Jewelers; Cathy Carmendy, Inc.; Joan Mansbach (Mansbach Creative); M. Fabrikant & Sons; Renee Moskowitz (Harper’s Bazaar); Nessi Erkmnaoglu (Harper’s Bazaar); Stephen Walker (Walker Metalsmiths, Inc.); Lieberfarb, Inc.; Gemstones, Etc.; Saturn Jewels; Kaiser Time, Inc.; Coge Design Group; Day’s Jewelers; Stuller, Inc.; Harvey Rovinsky (Bernie Robbins Fine Jewelry); JCM Designs, Inc., d/b/a Judith Conway; Joseph Barnard (Bernie Robbins Fine Jewelry); Jeff Cooper, Inc.; Alexander Primak Jewelry, Inc.; Hearts on Fire Co.; Kirk Kara; Vogue Magazine; Allan Freilich (Freilich Jewelers, Inc.); Cede Schmuckdesign GmbH; Representative Henry A. Waxman (writing on behalf of Martin Katz, Ltd.); Grando, Inc.; Susan Eisen (Susan Eisen Fine Jewelry and Watches); Zoltan David (Zoltan David Precious Metal Art); and Brian Guymon.

<sup>17</sup> See *supra* note 6.

<sup>18</sup> JVC comment at 4; PGI comment at 26. The following additional comments support this recommendation: Kwiat; Albert Malky, Inc.; John A. Green (Lux Bond & Green); C.F. Kisner, Inc.; Loyd Stanley (Stanley Jewelers Gemologist); JCK Publishing; Dana Sergenian; Traditional Jewelers; Cathy Carmendy, Inc.; Joan Mansbach (Mansbach Creative); M. Fabrikant & Sons; Renee Moskowitz (Harper’s Bazaar); Nessi Erkmnaoglu (Harper’s Bazaar); Robert Rowe (Lucky Magazine); Lieberfarb, Inc.; Richard Krementz Gemstones; Saturn Jewels; Kaiser Time, Inc.; Hank Siegel (Hamilton

<sup>8</sup> The Jewelers Vigilance Committee, Platinum Guild International, Manufacturing Jewelers & Suppliers of America, American Gem Society, Jewelers of America, Sonny’s On Fillmore, Kwiat, Inc., Cornell’s Jewelers, Michael Bondanza, Inc., PMI, Traditional Jewelers, Stanley Jewelers Gemologist, Davidson & Licht, Henne Jewelers, Johnson Matthey, and MJ Christensen submitted comments.

<sup>9</sup> Section 5 of the FTC Act prohibits deceptive acts or practices, in or affecting commerce. 15 U.S.C. 45(a).

<sup>10</sup> 70 FR 57807 (October 4, 2005).

<sup>11</sup> See 16 CFR 23.4 and 23.6 (addressing gold-plated, gold-filled, gold-overlay, gold-electroplated, and silver-plated jewelry products).

<sup>12</sup> The Jewelers Vigilance Committee, Platinum Guild International, and a jeweler manufacturer (Sasha Primak) state that there is a need for specific guidance regarding the thickness of the coating or plate and the purity of the platinum employed to cover the base metal.

<sup>13</sup> The associations include: Jewelers Vigilance Committee, Manufacturing Jewelers and Suppliers of America, Jewelers of America, and American Gem Society.

platinum is not like gold, which requires mixing with an alloy to make it more durable for jewelry.<sup>19</sup> Platinum jewelry, JVC and PGI explain, has always been produced as nearly pure or combined with other PGM. JVC and PGI state that alloys with non-PGM do not share the same characteristics as pure platinum or platinum alloyed with PGM.<sup>20</sup> These comments assert that disclosure of the differences between the two types of alloys would be complicated and highly technical and likely engender significant consumer confusion and deception.<sup>21</sup>

As its primary support, PGI commissioned a study from Thomas J. Maronick, titled "Platinum Awareness Study: An Empirical Analysis of Consumers' Perceptions of Platinum as an Option in Engagement Ring Settings" ("Maronick study"). The Maronick study polled 332 consumers, aged 21 through 34, who expect to become engaged in the next 12 months. PGI also submitted a 2003 marketing survey conducted by Hall & Partners ("Hall & Partners study") that consisted of 600 online interviews of women (ages 18-34) and men (ages 25-34). Additionally, PGI submitted two tests evaluating platinum/base metal alloys. The first test, by Hoover & Strong, compared a product that contained 59.2% platinum, 36.59% copper, 3.9% cobalt and trace amounts of gold, silver, and nickel to three products, one containing 950 ppt pure platinum, one containing 950 ppt palladium, and one containing 14 karat white gold. The second test, by Daniel Ballard of Precious Metals West, evaluated the properties of three different 585 ppt pure platinum/base metal alloys. It does not appear that the PGI tests evaluated a product identical in composition to the Karat Platinum platinum/base metal alloy.

The Maronick study concludes that consumers expect a high level of purity in a product marked "platinum." The majority of consumers surveyed stated that they would expect a ring labeled "platinum" to contain 80% or more

pure platinum.<sup>22</sup> The Maronick study also reports that if a ring has 40% or more non-PGM, over a third of the consumers surveyed would not expect the ring to be called "platinum."<sup>23</sup> If the ring does not have all of the properties of pure platinum, more than 50% percent of consumers polled would not expect it to be called "platinum."<sup>24</sup> The study further reports that even if a platinum product with 40% base metals shared all the properties of pure platinum products, 29% of consumers would not expect the product to be called "platinum."<sup>25</sup>

In addition, according to the study, 88% of consumers polled felt it was at least somewhat important to know the properties of a product before purchase (two-thirds of these consumers felt it was very important).<sup>26</sup> The study further concludes that the properties typically associated with platinum are important to most consumers' purchasing decisions. Specifically, between 60% and 90% of consumers polled responded that it was important to know a jewelry product's weight (76.2%) and whether the product is durable (93%), scratch and tarnish resistant (89.8% and 90.5%, respectively), able to be resized (82.2%), and hypoallergenic (64.4%).<sup>27</sup>

To further support its position, PGI refers to the Hall & Partners survey, which reported that the majority of consumers polled associate rarity, strength, and purity with platinum jewelry.<sup>28</sup> These consumers also view platinum as superior to other metals.<sup>29</sup>

The PGI and JVC comments assert that, because consumers understand platinum jewelry to be a pure or nearly pure product, marking products with lower amounts of pure platinum and no other PGM as "platinum" is deceptive.<sup>30</sup> JVC and PGI explain that consumers believe that using the word "platinum" conveys that the product is pure and contains the qualities consumers expect from traditional platinum jewelry.

The PGI and JVC comments also assert that consumers do not understand numeric jewelry markings listing metal content, such as 585Pt/0PGM or 585Pt./415 Co.Cu., or the karat systems used for gold markings.<sup>31</sup> The Maronick study

asked consumers whether they knew what 585 plat; 0 pgm meant and only 5.2% responded yes.<sup>32</sup> Of that 5.2%, however, only two consumers (less than 1% of the total consumers surveyed) correctly described the marking. The Maronick study also probed whether consumers understood a platinum/base metal alloy marking, "585 plat; 415 CO/CU." Only 7.5% stated they knew what this marking meant, but only 6.9% of those consumers actually understood that the marking described the proportion of platinum and other metals in the jewelry product.<sup>33</sup> Similarly, with respect to gold markings, the Maronick study reports that although 82.2% of respondents indicated they knew what 14 karat gold meant, only 16% of those respondents accurately indicated that it meant 58-59% gold.<sup>34</sup>

In addition, the PGI product testing shows that certain platinum/base metal alloys are inferior to platinum/other PGM alloys in terms of wear and oxidation resistance, weight loss, and ability to withstand a welding/soldering procedure for sizing.<sup>35</sup> The testing further shows that the platinum/base metal alloys in these tests may not be hypoallergenic.<sup>36</sup> It is not clear from the testing PGI submitted that all platinum jewelry products with less than 850 ppt pure platinum alloyed with base metals would yield the same test results. These tests evaluated products with 58.5-59.2% pure platinum. The record does not address whether products that contain a higher percentage of platinum, or the same percentage of platinum alloyed with different base metals, would produce different test results.

Based on their tests, JVC and PGI assert that, to avoid deception, marketers would need to disclose how platinum/base metal alloy jewelry products differ from traditional platinum jewelry in durability, strength, hypoallergenic properties, weight, purity, scratch resistance, tarnishability, and ability of jewelers to repair or resize the product. PGI and JVC, however, contend that appropriate and prominent disclosures addressing such extensive information are not feasible at the retail level.<sup>37</sup> Accordingly, JVC and PGI assert

that "Co" is the abbreviation for copper. JVC comment at 7.

<sup>32</sup> PGI comment, Attachment A, at 25.

<sup>33</sup> *Id.* at 26.

<sup>34</sup> *Id.* at 24.

<sup>35</sup> PGI comment, Attachment C.

<sup>36</sup> PGI comment, Attachment D.

<sup>37</sup> PGI contends that the Hall & Partners study supports this assertion. That study showed that only 25-30% of those people surveyed responded that sales people explained the differences between the different metals (gold, white gold, and platinum), and only 22-24% of consumers surveyed

Company); Vittorio Bassan (Stuart Moore, Ltd.); Coge Design Group; Day's Jewelers; Stuller, Inc.; Harvey Rovinsky (Bernie Robbins Fine Jewelry); JCM Designs, Inc., d/b/a Judith Conway; Joseph Barnard (Bernie Robbins Fine Jewelry); Jeff Cooper, Inc.; Alexander Primak Jewelry, Inc.; Hearts on Fire Co.; Kirk Kara; Vogue Magazine; Allan Freilich (Freilich Jewelers, Inc.); Cede Schmuckdesign GmbH; Representative Henry A. Waxman (writing on behalf of Martin Katz, Ltd.); Grando, Inc.; Susan Eisen (Susan Eisen Fine Jewelry and Watches); Zoltan David (Zoltan David Precious Metal Art); Techform Advanced Casting Technology; Douglas Liebman (Douglas M. Liebman, Inc.); Brian Guymon; and Wayne Schenk.

<sup>19</sup> JVC comment at 4; PGI comment at 16.

<sup>20</sup> JVC comment at 7-8; PGI comment at 17-19.

<sup>21</sup> JVC comment at 7; PGI comment at 15.

<sup>22</sup> PGI Comment, Attachment A, at Table 3.

<sup>23</sup> *Id.*, Table 7.

<sup>24</sup> *Id.*, Table 11.

<sup>25</sup> *Id.*, Table 8.

<sup>26</sup> *Id.*, Table 12.

<sup>27</sup> *Id.*, Table 13.

<sup>28</sup> PGI Comment, Attachment B, at 16, 28.

<sup>29</sup> *Id.* at 15, 25.

<sup>30</sup> JVC comment at 7-8; PGI comment at 17-19.

<sup>31</sup> PGI comment, Attachment A, Table 14. JVC notes that consumers are not experts in the Periodic Table of Elements and likely would not even know

that given consumers' perceptions of platinum jewelry, consumer confusion regarding jewelry markings, and their testing data, the appropriate course to avoid deception is to amend the Guides to state that products that do not contain at least 50% platinum and a combination of at least 950 ppt pure platinum and other PGM cannot be marked or described "platinum."<sup>38</sup>

JVC and PGI further submit that state laws in California, New York, New Jersey, Illinois, and Wisconsin do not permit platinum/base metal alloy jewelry products to be marked or described as "platinum." These state laws are based on historical Department of Commerce Voluntary Product Standards ("VPS"). JVC explains that the five state statutes require products to contain 950 ppt pure platinum (with solder) or 985 ppt (without solder) to be marked or marketed as "platinum" without qualification.<sup>39</sup> These statutes permit qualified platinum markings for products with at least 500 ppt pure platinum and 950 ppt total PGM.<sup>40</sup>

Finally, JVC and PGI state that the International Standards Organization ("ISO") standard for platinum markings also precludes marking or describing products as platinum unless they contain at least 850 ppt pure platinum.<sup>41</sup> JVC and PGI contend, that because many countries have adopted ISO standards, platinum/base metal alloy jewelry generally could not be marked as "platinum" if sold abroad.<sup>42</sup>

Karat Platinum disagrees with JVC's and PGI's positions on virtually every point. First, Karat Platinum states, that if the Commission determines that revising the Guides is appropriate, the revised Guides should simply codify the language in the February 2005 staff opinion letter. Karat Platinum further asserts that its platinum/base metal

alloy does share almost all of the same qualities as traditional platinum products.<sup>43</sup> It submitted testing of its alloy showing that it is superior to traditional platinum products in terms of strength, hardness, and casting ability, and that its ability to resist corrosion is equivalent to other platinum products. The only attribute of potential difference, according to Karat Platinum's study, is density—its platinum/base metal alloy is less dense.<sup>44</sup> Karat Platinum's test did not evaluate whether its alloy is hypoallergenic.

Karat Platinum further explains that, consistent with the FTC staff's advice, it will disclose its product's full composition, which will give consumers complete information about the content of the product and promote it as a "new product."<sup>45</sup> Karat Platinum did not submit any consumer survey evidence evaluating how consumers interpret its proposed marketing. It asserts, however, that consumers will understand that its product contains less platinum than traditional platinum jewelry because the description will put consumers on notice about the amount of platinum in the product and the "new" representations will alert consumers that it is different.<sup>46</sup> Karat Platinum asserts that consumers do understand karat markings. Karat Platinum argues that consumers know that gold has different levels of purity and is alloyed with different metals, and will similarly understand that platinum jewelry is not pure and is alloyed with different metals.<sup>47</sup>

Prohibiting marketers from using the word "platinum" because a product contains less than 85% platinum and no other PGM will not benefit consumers, according to Karat Platinum. This prohibition, Karat Platinum contends, will deprive consumers of truthful and accurate information about the product and the opportunity to own more affordable, high quality platinum jewelry.<sup>48</sup>

### B. Analysis of the Comments

The record supports the following conclusions: (1) a substantial number of consumers believe products marked or described as "platinum" are pure and possess certain desirable qualities; (2) a substantial number of consumers generally would not expect platinum/base metal alloy jewelry to be marked or

described "platinum"; (3) many consumers do not fully understand numeric jewelry markings and chemical symbols and may find them confusing; (4) testing data in the record suggests that some platinum/base metal alloys do not possess all of the qualities of higher purity platinum jewelry that consumers expect; and (5) the consumer perception and product testing data support revising the Guides to address the marketing of platinum/base metal alloys, as explained below.

#### 1. Consumer Perceptions Regarding the Use of the Term "Platinum"

The survey evidence PGI submitted, particularly the Maronick study, provides insight into consumer perceptions regarding the use of the term "platinum" to describe jewelry. The Maronick study presents evidence that many consumers understand that products marked or described as "platinum" are pure or nearly pure and that certain qualities or attributes typically associated with platinum are important to a substantial number of consumers. These qualities or attributes include the product's weight, durability, scratch and tarnish resistance, and whether it is hypoallergenic and can be resized.

#### 2. Consumer Expectations Regarding Products Described as "Platinum"

The Maronick study further found that a majority of consumers would not expect platinum/base metal alloys containing more than 40% base metal to be called "platinum," particularly if they do not possess the qualities and attributes present in higher purity platinum or platinum/other PGM products, such as those containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM. These findings indicate that many consumers have high expectations regarding products described as platinum, and draw the conclusion that such products possess certain qualities or attributes that make them superior to products consisting of other metals (e.g., superior strength, durability, and resistance to scratching and tarnishing).

#### 3. Consumer Understanding of Numeric Jewelry Markings

The Maronick study also provides evidence that many consumers do not fully understand numeric jewelry markings, particularly those using chemical symbols, such as 585 Pt./415 Co.Cu. The Maronick study, however, does not address what consumers take away from these numeric and symbolic markings for platinum jewelry products. The study asked consumers: "Do you

believed that sales people helped them to understand the differences. PGI comment, Attachment B.

<sup>38</sup> JVC comment at 4; PGI comment at 26.

<sup>39</sup> PGI comment at 3, 9 & n.33; JVC comment at 2 & n.2. Both PGI and JVC cite Cal. Bus. & Prof. Code §§ 22120-22132; Ill. Comp. Stat. §§ 395/0.01-395/0.11 (Platinum Sales Act); N.J. Stat. § 51:6 (Platinum and Alloys); N.Y. Gen. Bus. §§ 230-238 (Platinum Stamping); Wis. Stat. § 134.33 (Platinum Stamping).

<sup>40</sup> The statutes require that marketers must disclose the product composition indicating the number in ppt of each metal to qualify the platinum marking. See Cal. Bus. & Prof. Code §§ 22120-22132; Ill. Comp. Stat. §§ 395/0.01-395/0.11 (Platinum Sales Act); N.J. Stat. § 51:6 (Platinum and Alloys); N.Y. Gen. Bus. §§ 230-238 (Platinum Stamping); Wis. Stat. § 134.33 (Platinum Stamping).

<sup>41</sup> JVC comment at 8 & n.4; PGI comment at 20 (both citing ISO 9202:1991(E), "Jewellery - Fineness of precious metal alloys"). PGI explained that the ISO standard provides for three values in ppt for platinum jewelry: 950, 900, and 850. *Id.*

<sup>42</sup> JVC comment at 8; PGI comment at 20.

<sup>43</sup> Karat Platinum comment at 2.

<sup>44</sup> *Id.* at 3 and Exhibit A.

<sup>45</sup> *Id.* at 4.

<sup>46</sup> *Id.* at 5.

<sup>47</sup> *Id.* at 6-7.

<sup>48</sup> *Id.* at 1.

know what ‘585plat, 415 CO/CU’ means?” If consumers said no, the study did not ask follow up questions probing their actual understanding.<sup>49</sup> While consumers clearly could not identify the metals represented by the markings, it is not clear whether they understood that the product contained platinum and two other metals or that it contained a lower percentage of platinum than products without the markings. In a potentially analogous situation, the Maronick study showed that, even though many consumers cannot define the term “14 karat gold” accurately, the term does convey important information. Specifically, consumers understand that “14 karat” represents the amount of gold in the product, and that 18 karat gold jewelry contains more gold than 14 karat gold jewelry.<sup>50</sup>

While numerical and chemical markings may provide some useful information to consumers, the record indicates that even using full names and no chemical abbreviations to disclose the composition of platinum/base metal alloys may be inadequate. Specifically, the Maronick study shows that many consumers expect products described as platinum to have certain qualities and attributes, even if they consist in part of non-platinum group metals. Disclosure using full chemical names, therefore, might not provide adequate notice that the product may differ from products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM, with respect to one or more qualities or attributes important to consumers.

#### 4. Testing Data of Platinum/Base Metal Alloys

It is, therefore, important to determine whether platinum/base metal alloys have the same properties as products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM. The record provides a useful, albeit inconclusive, answer. Specifically, the record suggests that at least some platinum/base metal alloys do not possess all of the qualities of products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM. On one hand, PGI’s testing indicates that certain platinum/base metal alloys are inferior to higher purity platinum jewelry in terms of wear and oxidation resistance, as well as weight loss, and that they cannot be resized using certain procedures.<sup>51</sup> On the other hand, Karat

Platinum’s testing suggests that its alloy is superior or equivalent to higher purity platinum jewelry in several respects. Karat Platinum’s testing, however, showed that its alloy is less dense than higher purity platinum jewelry, and it did not test whether the alloy is hypoallergenic.

Accordingly, the record is incomplete regarding the extent to which platinum/base metal alloys differ from higher purity platinum or platinum/other PGM jewelry with respect to those qualities material to consumers’ purchasing decisions. The record is also incomplete regarding the extent to which the qualities and attributes of jewelry differ depending on the percentage of platinum and the type and percentage of base metal in the jewelry. The record does indicate, however, that at least some platinum/base metal alloys likely do not have all, or substantially all, of the qualities or attributes that consumers view as important in purer platinum products, such as those containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM.

#### 5. The Record Supports Amending the Platinum Section of the Guides

The record on consumer perception and the product testing described above supports amending the Guides to address the marketing of platinum/base metal alloys. In particular, the record supports revising the Guides to state that marketers may describe platinum/base metal alloys as platinum, provided they adequately qualify the claim.

The platinum section of the FTC’s Jewelry Guides currently provides that the unqualified use of the word “platinum” is deceptive for products that do not contain 950 ppt or more pure platinum. It also provides guidance on how marketers may qualify the word to describe certain products containing less than 950 ppt pure platinum. The Guides, however, do not address claims for products containing at least 500 ppt pure platinum alloyed with base metals. The JVC, PGI, and numerous retailers recommend that the FTC amend the platinum section of the Guides to state that even the qualified use of the word “platinum” to describe these products would deceive consumers.<sup>52</sup> Based on the current record, however, the Commission cannot conclude that the

properly qualified use of the word platinum to describe every platinum/base metal alloy would materially mislead consumers. Accordingly, we do not propose to amend the Guides in this manner.

The weight of the evidence leads us to conclude that there is a high probability of consumer deception if marketers describe platinum/base metal alloys as “platinum” qualified only with a disclosure of the product’s metal content using numbers and chemical abbreviations.<sup>53</sup> As discussed above, the record indicates that many consumers have pre-existing beliefs about the qualities of products marked or described as “platinum,” and at least some platinum/base metal alloys may not meet their expectations. The record also provides evidence that numeric markings and chemical abbreviations confuse many consumers. Thus, describing a platinum/base metal alloy as platinum and disclosing its metal content using numbers and chemical abbreviations would most likely fail to inform many consumers that the product differs from traditional platinum products with respect to the product’s purity as well as the qualities and attributes important to consumers. The record, therefore, demonstrates that marketers selling platinum/base metal alloys should disclose more detailed information to prevent deception.

To address potential consumer confusion regarding numbers and chemical abbreviations, the Commission proposes amending the Guides to state that marketers of platinum/base metal alloys described as platinum should expressly disclose that the product contains platinum and other non-platinum group metals and also separately disclose the product’s full composition, by name and not abbreviation, and the percentage of each other metal in the product.<sup>54</sup> By

<sup>53</sup> Karat Platinum’s suggestion that it will also market the product as “new,” which, it contends, conveys that the product differs from traditional platinum products and should prompt consumers to seek information about the product, is, at best, a temporary solution. Karat Platinum presumably will not market this product as “new” forever. In any event, a mere representation that a product is new would not disclose how it differs from products containing a higher percentage of platinum.

<sup>54</sup> This disclosure provides for the use of percentages rather than ppt because the survey evidence revealed that ppt markings, like numbers and chemical abbreviations, confuse consumers. The other provisions of the platinum section of the Guides provide for compositional disclosures using ppt. As discussed below, the proposed amendment would allow for the physical stamping of platinum/base metal alloy jewelry using ppt and chemical abbreviations. It is only the full composition

Continued

<sup>49</sup> PGI Comment, Attachment A, at 42.

<sup>50</sup> *Id.* at 24.

<sup>51</sup> PGI did not test Karat Platinum’s alloy.

<sup>52</sup> JVC and PGI acknowledge that a qualified use of the word “platinum” could, in theory, address consumer confusion or deception stemming from the use of the term “platinum” to describe platinum/base metal alloys. Yet, JVC and PGI assert that it would be impracticable and likely ineffective to make the lengthy, detailed disclosures that they believe would be needed to prevent deception.

disclosing the composition of the jewelry in this manner, marketers would alert consumers to the presence of particular metals and help prevent deception regarding the purity of products described as platinum.

For the reasons noted above, a full name composition disclosure should alleviate the confusion regarding a platinum/base metal alloy product's purity but would not necessarily alleviate all confusion regarding the product's other properties. The record demonstrates that use of the word "platinum," even in conjunction with a compositional disclosure, conveys important quality information to consumers (*i.e.*, that the product possesses qualities typically associated with platinum). As such, the record indicates a need for additional disclosure to prevent deception. Therefore, the proposed Guides state that marketers should expressly disclose that a platinum/base metal alloy product may not have all the properties that consumers associate with higher purity platinum/other PGM products.

The record does not address whether the term Karat Platinum or other qualifying moniker, either in conjunction with a compositional disclosure or without one, might imply that the product either differs in some respects from other products containing platinum or is comparable to other such products in material respects. Thus, we do not have a basis to conclude that use of the term Karat Platinum or other qualifying moniker will sufficiently alert consumers to the potential differences between platinum/base metal alloy jewelry products and higher purity platinum/other PGM products with respect to the properties material to consumers.

As noted earlier, the record does not include sufficient evidence for the Commission to identify which platinum/base metal alloys differ from products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM, and with respect to which attributes. Some platinum/base metal alloys, however, may be equivalent to products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM, with respect to some, or all, of the attributes important to consumers depending upon the percentage of platinum and both the percentages and types of base metals. For this reason, the proposed amendment provides that a marketer need not disclose that its

disclosure that will differ in that it provides for the use of percentages.

product may not have the same attributes or properties as products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM, if the marketer has competent and reliable scientific evidence that, with respect to all attributes or properties material to consumers (*e.g.*, the product's durability, hypoallergenicity, resistance to tarnishing and scratching, and the ability to resize or repair the product), such product is equivalent to products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM.

#### *C. Harmonization with State Law and International Standards*

The record includes evidence that laws in at least five states and an ISO standard that some countries have adopted do not permit platinum/base metal alloy products to be marked or described as "platinum." Thus, JVC and PGI contend that, if the FTC issues guidance allowing such products to be marked as "platinum," our Guides will conflict with state law and international standards. Although the Commission generally prefers to harmonize its guidance with state and international laws and standards, Commission Guides must be based upon the Section 5 deception or unfairness standard.<sup>55</sup>

The state laws and the ISO standard discussed above are not based upon a deception or unfairness standard. As explained above, the state laws that JVC and PGI cite are based upon VPS that the Department of Commerce promulgated 75 years ago.<sup>56</sup> VPS are developed through general consensus among affected parties.<sup>57</sup> Similarly, ISO

<sup>55</sup> The Trade Agreements Act of 1979 states that no federal agency "may engage in standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States and that federal agencies must, in developing standards take into consideration international standards and shall, if appropriate, base the standards on international standards." 19 U.S.C. § 2532(2)(A). The term "standard" in the Act includes guidelines that are not mandatory, such as the Jewelry Guides. The Act provides, however, that "the prevention of deceptive practices" is an area where basing a standard on an international standard "may not be appropriate." *Id.* at § 2532(2)(B)(i)(II).

<sup>56</sup> 61 FR 27185 n.99 (May 30, 1996) (explaining that the Commerce standards were promulgated in 1933).

<sup>57</sup> See 15 C.F.R. Part 10.3 (setting forth the procedures for the development of VPS). The states' statutes adopted the VPS verbatim many years ago (*e.g.*, California in 1941; New York in 1965; Wisconsin in 1979). Even if the states conducted an independent deception analysis when they adopted these standards, it is likely that consumer perception regarding platinum representations and the marketplace has changed over time. Indeed, it does not appear that any platinum/base metal alloy jewelry products marketed as platinum existed when the states

standards are technical industry standards developed through a consensus-building process.<sup>58</sup> Accordingly, although harmonization with state laws and international standards is typically favored, where, as here, our analysis of consumer perception data reveals that there is insufficient evidence that a particular claim (*i.e.*, a qualified platinum representation) is deceptive, the Commission cannot promulgate a guide stating that marketers should not make the representation solely to achieve harmony.

#### **IV. Proposed Amendment to Platinum Section of the Jewelry Guides**

##### *A. Proposed Amendment*

Based on the analysis above, the Commission seeks comment on a proposed amendment to Section 23.7(b) of the Jewelry Guides. The proposed amendment would allow marketers to physically mark or stamp platinum/base metal alloy jewelry with a standard platinum jewelry marking that lists the product's chemical composition (*e.g.*, 585 Pt./415 Co.Cu.), but also states that when making any other representation that the product contains platinum they should disclose additional information. This proposed amendment states that, to avoid misleading consumers, marketers should clearly and conspicuously disclose, immediately following the name or description of the product: (i) that the product contains platinum and

adopted these standards. In addition, these state statutes already conflict with the current platinum Guides. The Commission revised the Guides in 1997 to harmonize the treatment of platinum products containing 850, 900, or 950 ppt pure platinum with the ISO standard and to simplify the Commission's guidance for products containing less than 850 ppt, but more than 500 ppt, pure platinum and 950 ppt PGM. The state statutes mirror the FTC's pre-1997 Guides for these categories of platinum products. For example, the state statutes provide that products containing at least 750 ppt, but less than 950 ppt pure platinum (with solder; 985 ppt without solder) and 950 ppt PGM, may be marked platinum provided the name or abbreviation of the other PGM that predominates precedes the word platinum (*e.g.*, Irid-Plat.). See, *e.g.*, N.Y. Gen. Bus. Law § 234(b). Consistent with the ISO standard, the current Guides provide that products containing 850 ppt or more pure platinum may be "platinum" provided the name or abbreviation is preceded with the amount in ppt of the platinum in the product. For products containing at least 750 ppt, but less than 850 ppt, pure platinum and 950 ppt other PGM, the Guides provide that marketers should disclose both the amount in ppt of pure platinum in the product and other PGM. 16 C.F.R. §§ 23.7(c)(3-4).

<sup>58</sup> See [www.iso.org/iso/standards\\_development/process\\_and\\_procedures/how\\_are\\_standards\\_developed.htm](http://www.iso.org/iso/standards_development/process_and_procedures/how_are_standards_developed.htm) (explaining that ISO standards are developed through a consensus-building phase that takes into account the views of manufacturers, vendors and users, consumer groups, testing laboratories, engineering professionals, and research organizations).



other non-platinum group metals;<sup>59</sup> (ii) the product's full composition, by name and not abbreviation, and the percentage of each metal;<sup>60</sup> and (iii) that the product may not have the same attributes or properties as products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM.<sup>61</sup>

As noted above, the record indicates that a substantial percentage of consumers believe products described as "platinum" are pure. The first proposed disclosure will inform consumers directly that the product is not pure. In addition, by stating that marketers should include the full name, not the abbreviation, of each metal, the second disclosure will alleviate consumer confusion regarding numerical, abbreviated descriptions of jewelry content. The third proposed disclosure is designed to avert deception regarding quality information conveyed by the term platinum that the record demonstrates likely will not be addressed by a content disclosure alone.

However, because some platinum/base alloy products may possess all the attributes or qualities of platinum jewelry that are important to consumers, the proposed amendment contains an additional provision. That provision provides that a marketer does not need to make this third disclosure if the marketer has competent and reliable scientific evidence that, with respect to all attributes or properties material to consumers (*e.g.*, the product's

durability, hypoallergenicity, resistance to tarnishing and scratching, and the ability to resize or repair the product), such product is equivalent to products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM.

The proposed amendment does not contain a definitive listing of the attributes or properties material to consumers, nor does it specify the type of scientific substantiation necessary to avoid making the disclosure. Because the attributes or properties material to consumers and the nature of the substantiation may change over time, the Commission believes that flexible guidance is appropriate and that members of the jewelry industry are well-positioned to comply with such guidance. The Commission seeks comment on whether such guidance is sufficiently precise for marketers to avoid deceiving consumers regarding platinum/base metal alloys.

#### B. Text of the Proposed Amendment

The Commission proposes adding Section 23.7(b)(4) to the Jewelry Guides as an additional example of markings or descriptions of platinum that may be misleading.

The text of the proposed amendment of Section 23.7(b)(4) is as follows:

(4) 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) that the product contains Platinum and other non-platinum group metals;
- (ii) the full composition of the product (by name and not abbreviation) and percentage of each metal; and
- (iii) that the product may not have the same attributes or properties as products containing at least 850 parts per thousand pure Platinum, or at least 500 parts per thousand pure Platinum and at least 950 parts per thousand PGM.

*Provided, however*, that the marketer need not make disclosure 23.7(b)(4)(iii), above, if the marketer has competent and reliable scientific evidence that, with respect to all attributes or properties material to consumers (*e.g.*, the product's durability, hypoallergenicity, resistance to

tarnishing and scratching, and the ability to resize or repair the product), such product is equivalent to products containing at least 850 parts per thousand pure Platinum, or at least 500 parts per thousand pure Platinum and at least 950 parts per thousand PGM.

*Provided, further*, a 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, may be marked or stamped accurately, with a quality marking on the article, using parts per thousand and standard chemical abbreviations (*e.g.*, 585 Pt., 415 Co.Cu.).

Note to § 23.7(b)(4): 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% Copper/Cobalt).

#### V. Request for Public Comment

The Commission seeks public comment on a proposed amendment to the platinum section of the Jewelry Guides that provides guidance on how to mark or describe non-deceptively products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM. In addition, the Commission seeks public comment on whether it should revise the Guides to provide guidance on how to mark or describe platinum-clad, filled, plated, or overlay products.<sup>62</sup>

The Commission requests written responses to any or all of the following questions. The Commission requests that responses be as specific as possible, including a reference to the question being answered, and a reference to empirical data or other evidence wherever available and appropriate.

1. Should the Commission amend the platinum section of the Jewelry Guides by adopting the proposed amendment?
  - a. If so, why? Please provide any evidence that supports your answer.
  - b. If not, why not? Please provide any evidence that supports your answer.
2. Should the Commission revise the language in the proposed amendment to provide for additional disclosures to ensure that consumers are not misled, for example, by including additional, more detailed disclosures regarding how products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM, differ from

<sup>62</sup> See 16 CFR 23.4 and 23.6 (addressing gold-plated, gold-filled, gold-overlay, gold-electroplated, and silver-plated jewelry products).

<sup>59</sup> The proposed Guide provides for this disclosure for products that contain at least 500 parts per thousand, but less than 850 parts per thousand, pure Platinum, and do not contain at least 950 parts per thousand PGM. As such the provision applies to platinum/base metal alloys but would also apply to a product that contains platinum, base metals, and other platinum group metals—*e.g.*, 58.5% Platinum, 35% Copper/Cobalt, 10% Iridium. The second disclosure, providing for a full name compositional disclosure, would inform consumers of the presence of the other platinum group metals in the product. Nothing in the Guide, however, would prohibit marketers from also truthfully disclosing in this first disclosure that the product contains other platinum group metals (*e.g.*, this product contains platinum, other platinum group metals and other non-platinum group metals).

<sup>60</sup> The proposed Guide provides that 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% Copper/Cobalt).

<sup>61</sup> By making the second of these disclosures, a marketer would not satisfy the requirements of the first disclosure. Specifically, a consumer who received the composition disclosure would only understand that the alloy contained non-platinum group metals if he or she knew which metals comprised that group. The record, however, while not specifically addressing this issue, tends to demonstrate that many consumers do not have a clear understanding of metal alloys. Therefore, the first and second disclosures are necessary.



traditional platinum products<sup>63</sup> in terms of purity and rarity?

a. If so, how and why?

b. What evidence supports making your proposed revision(s)? Please provide this evidence and explain why any such revision is necessary to ensure that consumers are not misled.

c. If not, why not? Please provide any evidence that supports your answer.

3. Should the Commission revise the language in the proposed amendment to state that the disclosures should be physically attached to the jewelry product?

a. If so, how and why?

b. What evidence supports making your proposed revision(s)? Please provide this evidence and explain why any such revision is necessary to ensure that consumers are not misled.

c. If not, why not? Please provide any evidence that supports your answer.

4. Should the Commission revise the language in the proposed amendment to provide that marketers need only make the third disclosure that the platinum/base metal alloy may not have the same attributes or properties as traditional platinum products, if they represent expressly or by implication that such product has one or more of the same attributes or properties as traditional platinum products (*i.e.*, a triggered disclosure)?

a. If so, how and why?

b. What evidence supports making your proposed revision(s)? Please provide this evidence and explain why any such revision is necessary to ensure that consumers are not misled.

c. Is there any evidence indicating that the disclosure of the product's full composition will sufficiently alert consumers to the differences between platinum/base metal alloys and traditional platinum products containing a higher percentage of platinum or other PGM? If so, please provide this evidence.

d. If not, why not? Please provide any evidence that supports your answer.

5. Is there a specific word or phrase that could be used to describe products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM, that would adequately convey that such products differ from traditional platinum products?

a. If so, please identify such word or phrase and provide evidence demonstrating that it adequately conveys the differences between the products.

b. Would the term "platinum alloy," if used to describe products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM, adequately convey that such products differ from traditional platinum products? Please provide any evidence that supports your answer.

c. Should the Commission revise the language in the proposed amendment to address the use of such a specific word or phrase to describe products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM?

(1) If so, how and why?

(2) What evidence supports making your proposed revision(s)? Please provide this evidence and explain why such language adequately conveys the differences between the products.

(3) If not, why not? Please provide any evidence that supports your answer.

6. What, if any, additional disclosures are necessary to explain that a product that contains at least 500 ppt, but less than 850 ppt, pure platinum, and that does not contain at least 950 parts per thousand PGM, may not have the same attributes as traditional platinum products?

a. Should the Commission revise the language in the proposed amendment to require any such additional disclosures? How and why?

b. What evidence supports making your proposed revision(s)? Please provide this evidence.

c. If such disclosures are necessary, please explain the manner and form in which marketers should make them to ensure that they are clear and conspicuous to consumers.

7. The proposed amendment provides that marketers disclose the full composition of the platinum/base metal alloy using full, unabbreviated names and the percentage of each metal. Other provisions in the platinum sections of the Jewelry Guides provide for compositional disclosures using parts per thousand. Will the use of percentages for this disclosure confuse consumers?

a. If so, please provide any evidence that supports your answer.

b. If evidence does indicate that percentage disclosures will confuse consumers because the other platinum sections use parts per thousand, is there other evidence that indicates that the benefits of a percentage disclosure will outweigh the confusion?

c. If not, why not? Please provide any evidence that supports your answer.

8. What evidence, not submitted in response to the Commission's earlier

request for comment, indicates what specific properties are important to consumers when purchasing a product marked or described as "platinum"? If there is such evidence, please provide this evidence.

9. Is there evidence indicating the meaning consumers take from qualified platinum markings using abbreviations and chemical symbols (*e.g.*, 585 Pt., 415 Co.Cu.)? If so, please provide this evidence.

10. Is there evidence indicating the meaning consumers take from qualified platinum markings using full-name compositional disclosures (*e.g.*, 58.5% Platinum, 41.5% Copper/Cobalt)? If so, please provide this evidence.

11. Is there evidence indicating whether consumers think that products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM, share the qualities, such as durability, luster, density, scratch and tarnish resistance, ability to resize or repair, and hypoallergenicity, that are associated with traditional platinum products? If so, please provide this evidence.

12. Is there evidence indicating what qualities consumers associate with non-platinum PGM products (products made with platinum group metals other than platinum, *e.g.*, palladium, iridium), such as durability, luster, density, scratch and tarnish resistance, ability to resize and repair, and hypoallergenicity, that are associated with traditional platinum products? If so, please provide this evidence.

13. What constitutes "competent and reliable scientific evidence" to substantiate representations regarding the qualities material to consumers, such as the durability, luster, density, scratch and tarnish resistance, ability to resize and repair, and hypoallergenicity of traditional platinum products and products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM? Please provide any evidence that supports your answer.

14. Describe in detail the scientific tests used to determine or substantiate representations regarding the qualities material to consumers, such as the durability, luster, density, scratch and tarnish resistance, ability to resize and repair, and hypoallergenicity, of traditional platinum products and products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM. Please provide any evidence that supports your answer.

15. Describe in detail any differences between alloys that contain at least 500

<sup>63</sup> "Traditional Platinum Products" referred to in these questions means products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt total PGM.

ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM, and traditional platinum products in terms of the qualities material to consumers, such as durability, luster, density, scratch and tarnish resistance, ability to resize and repair, and hypoallergenicity. Please explain the basis for your answer and provide evidence that supports your answer.

16. Is there evidence indicating what the terms "Karat Platinum," "Platina," "Platinum V," and "Platinum 5" mean to consumers? If so, please provide this evidence.

17. Do consumers associate the terms "Karat Platinum," "Platina," "Platinum V," and "Platinum 5" with the qualities, such as durability, luster, density, scratch and tarnish resistance, ability to resize and repair, and hypoallergenicity, that are associated with traditional platinum products? If so, please provide any evidence that supports your answer.

18. Is there evidence indicating what the phrase "other non-platinum group metals" means to consumers? If so, please provide this evidence.

19. Should the Commission amend the platinum section of the Jewelry Guides to address other products that contain platinum, such as platinum-clad, filled, plated, coated, or overlay products, that are not currently addressed in the section?

a. If so, how and why?

b. What evidence supports making your proposed revision(s)? Please provide this evidence and explain why any such revision is necessary to ensure that consumers are not misled including specific guidance as to the recommended thickness of the filling, plating, or overlay of such platinum products.

c. If not, why not?

#### VI. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(4).

All comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before May 27, 2008.

By direction of the Commission.

**Donald S. Clark**

Secretary

[FR Doc. E8-3594 Filed 2-25-08; 8:45 am]

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## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Parts 101 and 102

#### Joint Petitions for Certification Consenting to an Election

**AGENCY:** National Labor Relations Board (NLRB)

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** As part of its ongoing efforts to address the needs of employers, individuals, and labor organizations and to further the fundamental purposes of the National Labor Relations Act, the National Labor Relations Board (NLRB) is proposing to adopt a rule that would authorize a petition for a prompt NLRB election to be jointly filed by a labor organization and an employer. The following proposal is offered to provide initial focus for public comment. The public is nevertheless encouraged to suggest alternatives.

**DATES:** All written comments must be received on or before March 27, 2008.

**ADDRESSES:** All written comments should be sent to the Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570-0001. The comments should be filed in eight copies, double spaced on 8½-by-11 inch paper and shall be printed or otherwise legibly duplicated.

**FOR FURTHER INFORMATION CONTACT:**

Lester A. Heltzer, Executive Secretary, Telephone (202) 273-1067, e-mail address [Lester.Heltzer@nlrb.gov](mailto:Lester.Heltzer@nlrb.gov).

**SUPPLEMENTARY INFORMATION:** Section 102.62 of the Board's Rules and Regulations currently provides three kinds of "consent" election procedures. Under § 102.62(a) and (b), the parties must stipulate with respect to jurisdictional facts, labor organization status, appropriate unit description, and classifications of employees included and excluded. The parties must also agree to the time, place, and other election details. Under § 102.62(a), the parties agree that post-election disputes will be resolved with finality by the Regional Director. Under § 102.62(b), post-election disputes are resolved pursuant to § 102.69 of the Board's Rules and Regulations, with the parties retaining the right to file exceptions or requests for review with the Board. Under § 102.62(c), the parties can agree to the conduct of an election with disputed pre-election and post-election matters to be resolved with finality by the Regional Director.

The current proposal for revision of the Board's Rules and Regulations would create a new, voluntary

procedure whereby a labor organization and an employer could file jointly a petition for certification consenting to an election. The petition will provide the date on which the parties have agreed for an election, not to exceed 28 days from the date of the filing of the petition, and the place and hours on which the parties have agreed for an election. In addition, the petition will provide a description of the bargaining unit that the parties claim to be appropriate, the payroll period for eligibility to vote in the election, and the full names and addresses of employees eligible to vote in the election. If the petition lacks any necessary information, the Regional Director will so advise the parties and request that the petition be corrected.

No showing of interest is required to be filed with the petition. If it appears to the Regional Director that the information provided on the petition is accurate and sufficient and that the bargaining unit description is appropriate on its face and not contrary to any statutory provision, the petition will be docketed. Within 3 days of the docketing of the petition, the Regional Director will advise the parties of his/her approval of their request for an election. The parties' agreement as to the date, place, and hours of the election will be approved by the Regional Director, absent extraordinary circumstances.

Also within 3 days of the docketing of the petition, the Regional Director will send to the employer official NLRB notices, informing employees that the joint petition for certification has been filed and specifying the date, place, and hours of the election. These notices must be posted by the employer in conspicuous places where notices to employees are customarily posted and must remain posted through the election. Failure to post these notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of § 102.69(a). In addition to these notices, the employer must also post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election, as required under § 103.20 of the Board's Rules and Regulations.

Any motions to intervene may be filed with the Regional Director in accordance with § 102.65 of the Board's Rules and Regulations, except that any such motion must be filed within 14 days from the docketing of the petition. The Board's traditional intervention policies regarding levels of intervention and the intervenor's corresponding