FEDERAL TRADE COMMISSION

16 CFR PART 23

Guides for the Jewelry, Precious Metals and Pewter Industries

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the ''Commission'') is requesting public comments on proposed revisions to § 23.7 of the Guides for the Jewelry, Precious Metals and Pewter Industries (''the Guides''). Section 23.7 of the Guides addresses claims made about platinum products. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning this proposal.

DATES: Written comments will be accepted until August 12, 1996.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. Comments about these proposed changes to the Guides should be identified as ''Guides for the Jewelry, Precious Metals and Pewter Industry—16 CFR Part 23—Comment.''

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio or Laura J. DeMartino, Attorneys, Federal Trade Commission, Washington, D.C. 20580, (202) 326–2966 or (202) 326–3030.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a separate Federal Register Notice (''FRN''), the Commission announced revisions to its Guides for the Jewelry Industry, renamed Guides for the Jewelry, Precious Metals and Pewter Industries, 16 CFR Part 23.[1] The Guides for the Jewelry, Precious Metals and Pewter Industries (''the Guides'') address claims made about precious metals, diamonds, gemstones and pearl products. The Commission did not revise section 23.7 of the Guides for the Jewelry Industry, which addresses claims made about platinum products. Industry members have indicated the need to simplify current Commission guidance regarding claims that a product is composed of platinum and bring this guidance into closer accord with international standards. The Commission concluded, however, that additional comment would be helpful to resolve certain issues. Below, the Commission describes the comments discussing the marking of platinum products, submitted in response to the prior FRN.[2] The Commission also discusses its proposed changes to this section. The Commission solicits comment on this provision of the Guides and the proposed changes.

II. Analysis of Comments

A. Background

Section 23.7 of the Guides for the Jewelry Industry states that it is an unfair trade practice to use the words ''platinum,'' ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' or ''osmium,'' or any abbreviations thereof, in a way likely to deceive purchasers as to the true composition of the product. The JVC proposed adding a sentence stating that platinum, iridium, palladium, ruthenium, rhodium, and osmium are the platinum group metals (''PGM''). Because not every reader of the Guides will be familiar with the term ''platinum group metals,'' the Commission proposes including the JVC's explanatory sentence in the Guides. The JVC also proposed adding definitions of ''platinum'' and ''quality mark.'' The Commission believes that the proposed definition of platinum is confusing (because it defines platinum, which is an element, as an alloy). The proposed definition of quality mark is unnecessary because that term is defined elsewhere in the Guides.

B. Suggested Provisions for Platinum Products

1. Proposals Based on the Voluntary Product Standards

In the Guides for the Jewelry Industry, a Note states that markings in compliance with Commercial Standard CS 66–38 (now Voluntary Product Standard 69–76) on the ''Marking of Articles Made Wholly or in Part of Platinum'' will be regarded ''as among those fulfilling the requirements relating thereto which are contained in this section.''[3] The JVC proposed incorporating the Voluntary Product Standard (''VPS''), with some changes, into the Guides.

The VPS sets out requirements for marking items as platinum. In section 3.5(1), the VPS states that an article without solder may be marked ''platinum'' if 985 parts per thousand are platinum group metals and 935 parts per thousand are pure platinum. The JVC proposed changing the requirement of 985 parts per thousand platinum group metals to 950 parts per thousand pure platinum. The FRN solicited comment on this proposed change.[4]

Fourteen comments addressed this issue. Two comments opposed the proposed standard, but offered no substantive reasons.[5] Twelve comments favored the revision.[6] The Platinum Guild stated that "'950 platinum' is an accepted standard worldwide [and] [a]doption of this standard simplifies the import and export of platinum jewelry and allows the U.S. to properly compete with others in the international marketplace.''[7] This comment was echoed verbatim by Johnson Matthey, a major platinum producer.[8] Because of the overwhelming support for the change, which harmonizes the Guides with international practices, the Commission proposes making this change.[9]

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[1] The Commission published a FRN soliciting public comment on amendments to the Jewelry Guides, including revisions to section 23.7 regarding platinum products. 57 FR 24996 (June 12, 1992). That FRN was published in response to a petition proposing changes, submitted by the Jewelers Vigilance Committee (''JVC'').

[2] 57 FR 24996 (June 12, 1992). The comments are cited to by an abbreviation of the commenter's name and the document number assigned to the comment on the public record. A list of the commenters, including the abbreviations and document numbers used to identify each commenter, is attached as an appendix.

[3] Commercial Standards were promulgated by the U.S. Department of Commerce and administered by the National Bureau of Standards (''NBS''). Later renamed by the NBS as Voluntary Product Standards, they had the same legal significance as FTC guides. The Department of Commerce and the NBS, which is now called the National Institute of Standards and Technology, withdrew these and all other VPS, as an economy measure, on January 20, 1984.

[4] The VPS provided, for the various types of PGM products, different ''parts per thousand'' requirements for products with solder and without solder. The JVC proposal dropped these references to solder (except as to a proposed new product, chain articles containing solder-filled wire, discussed *infra*). There was no comment opposing this change. The Commission solicits comment on whether references to solder should be included in the Guides.

[5] Korbelak (27) p.5 (stating that ''platinum is platinum'') and G&B (30) p.8 (stating that platinum should remain at a ''high, high, standard'').

[6] Fasnacht (4); Estate (23); Jabel (47); Handy (62); ArtCarved (155); IJA (192); Canada (209); Matthey (213); MJSA (226); Preston (229); PGI (245); and Leach (257).

[7] Comment 245, p.2 (stating further that other countries ''produce '950 platinum' alloys with oftentimes superior casting and working characteristics,'' and that ''[t]he U.S. needs these materials to be at the cutting edge of jewelry technology from a materials standpoint'').

[8] Matthey (213) p.2; ArtCarved (155) p.4 (stating that ''950'' is used internationally and should be the U.S. standard); Canada (209) p.4 (stating that the proposal ''would align the [Guides] with the current Canadian standard''); JCWA (216) p.3 (stating that ''lowering the minimum to a level of grade 900/1000 would better reflect accepted international practice'').

[9] The National Stamping Act, which establishes tolerance for gold and silver, does not apply to platinum. The JVC proposed including a Note stating that the ''actual Platinum content of an industry product shall not be less than the Platinum content indicated by the quality marks.'' However, because extremely minor variances of the type

The JVC also suggested including in the Guides two other sections of the VPS that state, for an article with 950 parts per thousand platinum group metals but less than 950 parts pure platinum, that other platinum group metals in the article be disclosed in the mark.[10] If the platinum is 750 parts or more, the next predominate metal should be named (*e.g.*, Irid-Plat, for an item containing 90% platinum and 10% iridium). If the platinum is less than 750 parts (but at least 500 parts pure platinum), all the other platinum group metals should be named, preceded by a number indicating the amount in parts per thousand of that metal (*e.g.*, 600 platinum-350 iridium).[11]

The Commission is seeking comment on whether it should adopt these sections as safe harbor provisions (*i.e.*, as examples of markings and descriptions that are not considered unfair or deceptive). The Commission asks that commenters address whether the marking of an item containing between 750 and 950 parts platinum (*e.g.*, Irid-Plat), will be understood by consumers or whether it will be confusing. The Commission is especially interested in how consumers will interpret a marking where the next predominate metal precedes the word platinum.

The Commission also solicits comment on the need for separate guidance for items containing between 750 and 950 parts pure platinum and items containing between 500 and 750 parts pure platinum. The Commission is considering one safe harbor provision for all items containing less than 950 parts pure platinum, that would recommend naming all platinum group metals in the item, preceded by a number indicating the amount in parts per thousand of that metal. This change may simplify Commission guidance and provide greater information to consumers about the amount of platinum and other platinum group metals in the item. The Commission requests comment on this approach.

The JVC also proposed including a section that states that no article containing fewer than 500 parts per thousand of pure platinum shall be marked ''platinum.'' This proposal differs from the VPS section, which states that such an article can be marked ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' or ''osmium'' (whichever predominates in the article) if the article consists of 950 parts per thousand of platinum group metals.[12] There was no comment on this section. The Commission believes that referring to an article that contains less than 500 parts pure platinum as ''platinum,'' without qualification, may be deceptive. The Commission does not believe that it would be deceptive to mark the item with the name of the predominate metal in the item. The Commission recognizes, however, that the predominate metal in such an item may be platinum (*e.g.*, 480 platinum, 250 palladium, 220 iridium). Although the Commission proposes including the provision, in the form it appears in the VPS, as a safe harbor provision in the Guides, it solicits comment on whether the Guides should address separately the situation where an item contains less than 500 parts pure platinum, but platinum is still the predominate metal.

2. Other Proposals

The Commission received a request for an advisory opinion from the JVC and Platinum Guild International on November 30, 1995. The JVC and Platinum Guild International requested that the Commission advise that the following markings or descriptions would not be considered deceptive: PT850 or 850 Plat; PT900 or 900 Plat; PT950 or 950 Plat; and PT999 or 999 Plat. The minimum content for platinum would be 850 parts per thousand. The JVC and Platinum Guild International state that these markings are similar to markings for gold jewelry and would be more understandable than the markings suggested in the VPS. They also state that these markings are used in Japan and Switzerland.

The request differs from the scheme of marking that is contained in the Voluntary Product Standard, described above. For items with less than 950 parts pure platinum, the other component platinum group metals would not be disclosed. Under this scheme of markings, it is unclear how products containing less than 850 parts platinum would be described. The Commission solicits comment on these issues and the costs and benefits of these markings relative to those in the VPS.

3. Abbreviations and Trademarks

The JVC proposed including a section from the VPS describing the ''recognized abbreviations'' for each of the platinum group metals (platinum, iridium, palladium, ruthenium, rhodium and osmium).[13] Each is a four-letter abbreviation. The Platinum Guild suggested that these abbreviations be changed to permit the use of two letter abbreviations.[14] The Guild stated that jewelry manufacturers have said that ''the marking requirements and long metal abbreviations are a deterrent to entering the marketplace with a product such as '585 PLAT 365 PALL.' Shorter abbreviations would be a real help to the platinum segment of the jewelry industry, *i.e.*, '585 PT.' ''[15]

The two letter abbreviations are the same as those listed in the periodic chart of the elements, but the four-letter abbreviations are more likely to be understood by consumers with no knowledge of chemistry. However, in response to the comments, the Commission proposes including a provision that states that the four-letter abbreviations are preferred, but that the use of two-letter abbreviations on articles that consist of more than two platinum group metals would not be objectionable. Comments on this proposal and on whether two-letter abbreviations should be acceptable in all situations are desired.

The JVC also recommended including in the Guides the VPS section that requires that, if a platinum quality mark appears on an article, the trademark of the manufacturer must also appear. The eleven pertinent comments discussing this proposal all favored requiring a trademark on quality-marked platinum.[16] However, most gave no reason. Platinum is not covered by the National Stamping Act, which requires that an article that is stamped with a quality mark indicating that it is made of gold or silver, also bear a trademark of the manufacturer or importer. Preston stated that the Commission would be ''the next logical Federal authority * * * to close the trade mark stamping gap for platinum products'' and that this requirement would ''help maintain uniformly high product standards by causing manufacturers, importers, or sellers who stamp ''platinum'' on their products to identify themselves.'' [17]

The purpose of the Guides, however, is not to ''maintain uniformly high product standards'' but rather to prevent unfairness and deception. It is neither deceptive nor unfair to mark an item as

allowed by the gold and silver tolerances in the National Stamping Act might not be unfair or deceptive, the Commission does not propose including this Note.

[10] Jabel (47) noted at p.1, that ''there's an awful lot of *real* (10% iridium platinum) platinum out there that should be acknowledged.'' This provision addresses the marketing of this product.

[11] VPS sections 3.5(2) and (3).

[12] VPS section 3.5(4).

[13] VPS section 5.

[14] Comment 245, pp. 2–3. ''Plat.,'' ''irid.,'' ''pall.,'' ''ruth.,'' ''rhod.,'' and ''osmi.'' could be replaced by ''PT,'' ''IR,'' ''PA,'' ''RU,'' ''RH,'' and ''OS.''

[15] Comment 245, p.3.

[16] Fasnacht (4); King (11); Estate (23); G&B (30); Handy (62); McGee (112); Bridge (163); IJA (192); Canada (209); Matthey (213); and MJSA (226).

[17] Comment 229, p.10.

platinum but not to identify the trademark of the manufacturer.[18] Hence, the Commission has not included in the Guides a requirement that the trademark must accompany any platinum quality mark.

Finally, the JVC proposed including the list of ''exemptions'' (*e.g.*, joint, catches, etc.) to which the quality mark is deemed not to apply. The Commission proposes adding a note to the section stating that a list of exemptions can be found in the appendix.

C. Suggested Provisions for Platinum-Filled Products

The JVC proposed including a subsection on ''platinum-filled'' or ''platinum overlay'' (*i.e.*, platinum-plated) products. The FRN asked whether a standard should be established for platinum-filled, platinum overlay, or platinum-clad products and whether a standard that the plating constitute at least 1/20th of the weight of the entire article would be appropriate.

In response to this question, Preston stated that platinum-filled and platinum overlay are not yet produced commercially by the platinum industry. Preston also stated that since these products may be introduced in the future, the JVC's Platinum subcommittee, ''[i]n the absence of carefully explored standards * * * arbitrarily copied the technology and standards for similar products in the gold industry.'' [19]

Some comments stated that a standard should be established.[20] One noted that ''if [platinum plating] is currently being done, it should have the same regulations as gold coated products.'' [21] However, another stated the same terms should *not* be used for gold and platinum.[22] Alexander Korbelak stated that the term ''platinum-filled'' was deceptive.[23] Others simply answered the question in the FRN ''yes'' [24] or ''no.'' [25]

Sheaffer commented that ''a standard should be established for platinum plating (regardless of how applied),'' but favored a standard specifying minimum fineness and thickness. Sheaffer stated that a standard based on a weight ratio ''will encourage the production of inferior articles lacking strength and rigidity as the thickness and, thus, the cost of the plate can readily be reduced by use of a very thin base material.'' [26]

The Platinum Guild and Johnson Matthey both favored the proposed standard, noting that it ''will assure that a properly manufactured product will be durable and have a reasonable precious metal content.'' [27]

Because the comments indicate that platinum-filled products are not currently being marketed, there are no deceptive practices occurring. Moreover, there appears to be little consensus on what standard would best meet consumer expectations. Thus, the Commission does not propose including a provision for this product in the Guides at this time. Future marketers of such products could be guided by the provisions that apply to gold- and silver-plated products. The Commission, however, solicits comment on whether there is a need to address platinum-filled products in the Guides at this time, and if so, why.

D. Proposals for Solder-Filled Platinum Chain

The JVC proposed adding a provision on solder-filled platinum chain. The FRN solicited comment on whether a standard of 850 parts per thousand pure platinum is appropriate.

The Platinum Guild and Johnson Matthey both noted that Japan, which consumes the greatest amount of platinum jewelry in the world, uses the 850 standard for platinum chain. They stated that the 850 standard is appropriate, ''whether solder filled or solid wire is used in the manufacture of the product,'' and noted that ''Internationally, little solder filled wire is used * * * .'' Both also stated that a standard of ''850 platinum'' for chain products ''will allow the U.S. manufacturer to compete more fairly in the world marketplace.'' [28] MJSA stated that the proposed 850 standard for platinum chain ''is consistent with existing industry standards and practices.'' [29] Other comments simply approved the proposed standard.[30] Canada commented that ''in Canada no specific standard is advised as the question is under review.'' [31] Korbelak stated that such a product should be designated ''solder-filled platinum.'' [32]

Because the comments indicate that the proposed standard reflects existing standards both in the U.S. and abroad, the Commission proposes including this standard, as a safe harbor, in the Guides.

E. Proposals for Platinum in Combination with Gold Products

Finally, the JVC recommended including a section, adapted from the Voluntary Products Standard, providing that an article in which platinum is combined with gold so that they are ''visually separable and easily distinguishable one from the other,'' may have the term ''platinum'' applied followed by a karat mark. However, the combination of platinum and gold is adequately covered in the Guides by the respective sections on platinum and gold and by the section on quality marks.[33] Thus, the Commission has concluded that it is unnecessary to include this section in the revised Guides.

III. Request for Comment

The Commission seeks public comment on section 23.7 of the Guides and all of the proposed changes discussed above. The Commission also requests comment on the following specific questions:

1. Do products with less than 950 parts per thousand pure platinum have the same qualities and characteristics as products with larger amounts of platinum?

2. Products consisting of between 750 and 950 parts per 1000 pure platinum may be marked ''platinum'' provided that the name of the next predominant PGM precedes the word platinum. Products consisting of between 500 and

[18] If there are problems with the product, the consumer can seek assistance from the seller of the item (probably a retailer who in turn may know, or seek assistance from, the manufacturer of the item).

[19] Comment 229, p.9; Jabel (47) p.1 (stating, ''How were these standards established? For wear? For weight? For appearance?''); Canada (209) p.4 (stating that the proposed standard ''deserves further study,'' and noting that ''there is industry interest for other platinum products with approximately 585 parts platinum per 1000 parts metal'').

[20] Phillips (204) p.1 (stating that ''some standard for platinum filled needs to be established''); Bruce (218) p.9 (stating that ''platinum-filled'' products may have overseas potential and that it would be best ''to have standards set, so that when the opportunity comes, the material will be covered'').

[21] Bales (156) p.9.

[22] G&B (30) p.8.

[23] Comment 27, p.5.

[24] Estate (23); Schwartz (52); Handy (62); and MJSA (226).

[25] Leach (257).

[26] Comment 249, p.4; ArtCarved (155) p.4 (stating that a ''coating thickness'' standard would be more appropriate than a weight standard).

[27] PGI (245) p.2 and Matthey (213) p.2 (both stating that electroplating, or chemical deposition of platinum, although currently not a factor in the marketplace, ''may need to be addressed in future guides'').

[28] PGI (245) p.2; Matthey (213) pp.2–3.

[29] Comment 226, p.6.

[30] Estate (23); Handy (62); G&B (30); and Jabel (47).

[31] Comment 209, p.4.

[32] Comment 27, p.5.

[33] Section 23.8(a)(2) of the Guides deals with quality marks on products that are a combination of two or more metals of similar surface appearance. This section provides that ''each quality mark should be closely accompanied by an identification of the part or parts to which the mark is applicable.'' The Commission has determined that the guidance provided in this section will prevent deception.

750 parts per 1000 pure platinum may be marked ''platinum'' provided that all PGM in the product are marked and preceded by a number indicating the amount of the metal in parts per thousand. Should the guidance for all products consisting of less than 950 parts pure platinum be the same? If so, why? What are the reasons for having different standards for the products?

3. For products consisting of less than 950 parts pure platinum, what are the benefits and costs of marking each PGM contained in the product? Should the amount of each metal, in parts per thousand, be disclosed?

4. Should products with less than 950 parts pure platinum be marked with only the amount of pure platinum contained in the product (*e.g.*, PLAT 900)? Do consumers understand this marking? Would percentage markings (*e.g.*, 90% Plat) be preferable and feasible?

5. Are there any international standards for marking platinum products? Should the Guides follow these standards? Why or why not?

6. Should products with less than 500 parts per thousand pure platinum be marked ''platinum''? Why or why not?

7. Should platinum and other PGM be described with two letter abbreviations? Do consumers understand two letter abbreviations?

8. Is there a need for Commission guidance regarding descriptions of platinum-filled, platinum overlay or platinum-clad products? If so, how should these products be addressed?

9. Should chain articles containing solder-filled wire and consisting of at least 850 parts per thousand pure platinum be marked ''platinum''? Why or why not?

List of Subjects in 16 CFR Part 23

Advertising; Jewelry; Trade practices.

Accordingly, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

1. The authority citation for Part 23 continues to read as follows:

Authority: Sec. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.

2. Section 23.7 is revised to read as follows:

§ 23.7 Misuse of the words ''platinum,'' ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' and ''osmium.''

(a) It is unfair or deceptive to use the words ''platinum,'' ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' or ''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. The Platinum Group Metals (PGM) are Platinum, Iridium, Palladium, Ruthenium, Rhodium, and Osmium.

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

(1) The following four-letter abbreviations for each of the PGM may be used for quality marks on articles consisting of one or two PGM: ''Plat.'' for Platinum; ''Irid.'' for Iridium; ''Pall.'' for Palladium; ''Ruth.'' for Ruthenium; ''Rhod.'' for Rhodium; and ''Osmi.'' for Osmium. If an article contains more than two PGM, the following abbreviations may be used for quality marks to disclose three or more constituent metals: ''Pt.'' for Platinum; ''Ir.'' for Iridium; ''Pd.'' for Palladium; ''Ru.'' for Ruthenium; ''Rh.'' for Rhodium; and ''Os.'' for Osmium.

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

(3) An industry product consisting of at least 950 parts per thousand PGM, of which at least 750 parts per thousand are pure Platinum, may be marked ''Platinum'' provided that the name or abbreviation of the PGM member that is the next largest constituent of the alloy immediately precedes the word ''Platinum.''

(4) An industry product consisting of at least 950 parts per thousand PGM, of which at least 500 parts per thousand (but less than 750) are 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, ''600 Plat.-350 Irid.,'' ''700 Platinum-250 Iridium,'' or ''500 Pt.-250 Pd.-200 Ir.''

(5) An industry product consisting of at least 950 parts per thousand PGM, of which less than 500 parts per thousand are pure Platinum, may be marked with the name or abbreviation of the PGM member that predominates in the product, provided that the mark is preceded by a number indicating the amount in parts per thousand of the PGM. Such product should not be marked with the name or abbreviation for platinum.

(6) Chain articles containing solder-filled wire and consisting of at least 850 parts per thousand pure Platinum may be marked ''Platinum.''

Note to § 23.7: Exemptions recognized in the assay of platinum industry products are listed in the Appendix to Part 23.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS

Abbreviation	No.	Commenter
ArtCarved	155	ArtCarved.
Bales	156	Bales Diamond Center & Mfg. Inc.
Bridge	163	Ben Bridge.
Bruce	218	Donald Bruce & Co.
Canada	209	Consumer & Corporate Affairs Canada.
Estate	23	Estate Jewelers.
Fasnacht	4	Fasnacht's Jewelry.
G&B	30	Gudmundson & Buyck Jewelers.
Handy	62	Handy & Harman.
IJA	192	Indiana Jewelers Association.
Jabel	47	Jabel Inc.
JCWA	216	Japan Clock & Watch Association.
King	11	King's Jewelry.
Korbelak	27	A. Korbelak.
Leach	257	Leach & Garner Co.
Matthey	213	Johnson Matthey.
McGee	112	McGee & Co.
MJSA	226	Manufacturing Jewelers & Silversmiths of America, Inc.
PGI	245	Platinum Guild Int'l U.S.A. Jewelry, Inc.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
Phillips	204	Phillips Jewelers, Inc.
Preston	229	F.J. Preston & Son Inc.
Schwartz	52	Charles Schwartz.

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