

February 6, 2018

Submission of Comments to Federal Trade Commission

Submitter: Safety-Kleen Systems Inc.

RE: Comments on 16 CFR Part 311: Test Procedures and Labeling Standards for Recycled Oil

Safety-Kleen welcomes the opportunity to submit comments on the proposed rule to specify test procedures and labeling standards for recycled oil. Safety-Kleen is a leading provider of environmental services to commercial, industrial and automotive customers. We are the largest re-refiner of used oil and provider of parts cleaning services in North America. Our broad selection of environmentally responsible products and services ensure the proper collection, processing, re-refining, recycling and disposal of hazardous and non-hazardous materials.

We own and operate four of the largest oil re-refineries in North America, collecting and processing more than 220 million gallons of oil per year. Through a closed-loop system, we are able to collect used oil and re-refine it into premium quality base oils and finished products that can be returned to the marketplace.

Overview: Re-refining used lubricating oil generates significant energy and environmental benefits, and has been deemed by federal agencies and national research laboratories as the highest and best use of this valuable commodity.¹ Re-refined oil meets American Petroleum Institute performance classifications, has been deemed suitable for use by major manufacturers of gas and diesel engines, and is used successfully by government, commercial and local transit fleets, among others.² In addition, re-refined oil is price competitive and widely available in the U.S., particularly for large fleets. The practice helps generate good paying domestic jobs in the collection and transport of used oil and the manufacture of re-fined base oils.

We note that the rule is the result of legislation passed by Congress in 1975 to encourage greater acceptance of re-refined oil and that there continues to be congressional support of this effort as evidenced by bipartisan legislation passed by the House of Representatives on two occasions – once in 2015 as a floor amendment to the North American Energy Security and Infrastructure Act of 2015 (H.R. 8) of and last year in passage of H.R. 1733, to direct the Secretary of Energy to review and update a report on the energy and environmental benefits of the re-refining of used lubricating oil.

Current U.S. Market: The most recent Federal study of the industry was completed more than ten years ago and was based on then old data. It showed that of the 1.4 billion gallons available for collection each year, only about 12 percent was re-refined. We believe the trend today is

¹ [Lawrence Livermore National Laboratory report](#) "Improving Used Oil Recycling in California" (2008) p. 1; [Department of Energy report](#) "Used Oil Re-refining Study to Address Energy Policy Act of 2005 Section 1838" (2006) p. 15.

² [DLA Program Manual](#)

toward an increase in collection and reuse but the United States lags well behind other developed countries which re-refine as much as 90 percent of their used oil and use much more of it to meet total lubricating oil needs. We believe that the FTC's Rule has helped to increase acceptance of re-refined oil by creating an objective benchmark by which all oil can be measured. This is essential in overcoming misleading and false assertions challenging the quality of re-refined lubricating oils by some including those marketing competing oils made from virgin crude.

The re-refining industry and the products they produce continue to improve. New technologies and increased use of higher quality and synthetic lubricating oils equates to higher quality feedstocks and improved characteristics of the finished lubricants. This coincides with increased demand for higher quality, API Group III, lubricating oils which reduce engine friction and allow vehicles to meet higher mandated new vehicle fuel economy standard and reduce engine wear, extending the life of cars and trucks on the road. These higher quality standards are made possible because of the FTC's engine oil Rule.

Comments:

1) Need: Is there a continuing need for the Rule? Why or Why not?

Yes, this rule has allowed significant job growth and expansion of the re-refining industry throughout North America. Re-refined base oils represent high quality API Group II and Group III base oils suitable for blending back into premium API licensed passenger car motor oils and heavy duty diesel engine oil along with a wide range of premium industrial lubricants. Industry growth was made possible by product quality validation and licensing through the use of API publication 1509. API licensing levels the playing field with virgin oil manufacturers by requiring virgin and re-refiners to certify their products to the same strict testing protocols and allowing both to display the same quality markers on packaged goods sold to the public (API donut, defining the quality level and starburst labeling, indicating products meet new car warranties). Several decades ago, there were quality assurance concerns expressed by some entities, associated with oils refined from used oil, based on false or misleading assertions that finished products are contaminated, do not perform as well as virgin oils and can cause vehicle damage. This has been scientifically proven to be untrue in large part because of the rigorous API certification processes outlined in API publication 1509 and its associated After Market Audit Program. Under the AMAP Program, API independently pulls and tests products from the market place to ensure they meet the original licensed quality level, providing the consumer with confidence that both virgin and re-refined oils meet the required quality level.

2) Benefits and Costs to Consumers, What benefits has the Rule provided to consumers, and does the Rule impose any significant costs on consumer?

Through the use of a standardized testing and certification process (API Publication 1509), both oils made from virgin crude and used oil can share testing through test matrixes, reducing the cost of certification, this allows producers to control the cost of finished products to the consumer. If each company had to certify its own products, production and consumer cost would be significantly increased. Standardized testing, labeling and independent monitoring provide a logical system that simplifies consumer understanding of required quality and certification levels they require for their vehicles, this also increases finished oil buying options and competition in the market place by allowing more manufacturers, including smaller businesses, to certify products. Standardized testing through API also allows the oil industry to work in tandem with passenger car and heavy duty diesel vehicle manufacturers to continually upgrade lubricant quality, to assist in fuel economy upgrades, address new performance needs and to help in the reduction of emission through exhaust contaminant capture. Past quality increases have required manufacturers to significantly increase the quality level of the base oil needed to meet new and stricter performance levels. Oils have moved from conventional API Group I to Group II oils and are now moving to full synthetic API Group III oils. As the quality levels of finished oils increase, the quality and value of the used oil molecule increases (re-refined oil quality continues to increase as higher quality virgin oils are used in finished formulations, oils continually upgrade). API works with oil industry, additive companies and automotive manufacturers to modify the testing requirements needed to meet new quality standards, this allows virgin and re-refined oils to upgrade their quality simultaneously again reducing complexity for the consumer, reducing product upgrade costs and ensuring multiple consumer choices and competition in the market place.

3) Benefits and Costs to Industry Members, What benefits, if any, has the Rule provided to businesses, and does the Rule impose any significant costs, including costs of compliance on businesses, including small businesses?

Benefits of a standardized system to both business and industry have been identified in the preceding sections. A standardized system as defined in API Publication 1509, does not impose cost to the consumer, both virgin and re-refiners bear the cost of testing, licensing and certification of their products. The cost is acceptable to both virgin and re-refiners as it reduces individual testing costs, allows for development of finished oils between auto manufacturers, additive companies and base oil suppliers (both virgin and re-refined), simplifying finished fluid designs.

4) Recommended Changes: What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs?

We only have one recommendation for change or reduced cost. The Rule's provision on testing refers to API Publication 1509 (Fifteenth edition). The current and updated API Publication 1509 is the Seventeenth edition. We recommend reference to this document be revised to the most current standard revision to ensure both virgin and re-refined quality levels meet the most current standard.

5) Impact of Information: What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumer?

API Publication 1509 ensures lubricant manufacturers, both virgin and re-refiners, perform all the necessary testing requirements to ensure their products meet the stated product claims. Packaged products marketed to businesses and consumers require specific labeling through API donut and starburst symbols that clearly identify the performance level and quality of the lubricant. API independently and continually verifies the quality of marketed products through their "After Market Audit Program". API pulls random samples from the market place and performs testing to verify products meet the stated performance claims. This system provides a clear marking system to the consumer of product type, quality level and performance level. Without a standardized system for virgin and re-refined manufacturers alike, product quality from individual manufacturers could significantly vary and inferior products could be marketed. As stated above, a standardized, objectively verifiable test provides a way to refute false claims and consumer concerns that "used" oil, means lower quality oil through rigorous testing and evaluation using a uniform benchmark.

6) Compliance: Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why, and how? If no, why not?

API Publication 1509 contains an independent monitoring system called AMAP (After Market Audit Program). AMAP is an independent compliance monitoring system run by API in which API secures licensed products from the market place and tests them for compliance against the original fluid certification testing. In cases where a product varies from original testing, the marketer is required to formally respond to API with an explanation of the deviation. If a marketer does not provide an acceptable explanation and corrective action plan, they can be de-licensed and banned from using API quality labeling. Marketing products that do not display API quality markings (donut and starburst), severely limits markets where the products can be sold or used.

- 7) **Unnecessary Provisions: Provide any evidence concerning whether any of the Rule's provision are no longer necessary. Explain why these provisions are unnecessary.**

Safety-Kleen has reviewed all aspects of the Rule, we do not recommend any changes to the Rule's provisions, We believe they are necessary and appropriate.

- 8) **Technological or Economic Changes: What modifications, if any, should be made to the Rule to account for current or impending changes in to technology or economic conditions? How would these modifications affect thee costs and benefits of the Rule for consumers and businesses, particularly small businesses?**

We do not recommend any changes to the Rule as provisions are in place through API for routine updates of API 1509. As new lubricant quality levels are required to meet industry needs, representatives from API, Automotive Manufacturers, additive and lubricant companies work through API committees to develop new testing and specification requirements. API Publication 1509 is modified and revised to match and the Rule's use of API 1509 allows the flexibility to periodically update the FTC standard as needed should API update the standard in the future

- 9) **Conflicts with Other Requirements: Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how? Provide any evidence that supports your position With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not? Are there any Rule changes necessary to help state law enforcement agencies combat deceptive practices in the recycled engine oil market? Provide any evidence concerning whether the Rule has assisted in promoting national consistency with respect to the advertising of recycled engine oil.**

Safety-Kleen is well versed in regulations governing used oil. We are not aware of any conflicts with other federal, state, or local laws or regulations.

- 10) **Update Rule Reference to API Document: Should the Commission update the Rule to incorporate by reference the current version (i.e. the Seventeenth Edition) of the API Publication 1509? If so, should the incorporation include a specific date or other information to identify the seventeenth edition of API Publication 1509?**

Safety-Kleen supports update of the Rule to incorporate by reference the current version (i.e. the Seventeenth Edition) of the API Publication 1509.

Again, we appreciate the opportunity to submit these comments in support of a continuation of the FTC's Recycled Use Oil Rule.