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February 12, 2018

Hampton Newsome, Esq.  
Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, NW (CC-9528)  
Washington, D.C. 20580

**Re: Test Procedures and Labeling Requirements for Recycled Oil – FTC-2017-0101-0001 – 16 C.F.R. Part 311**

Dear Mr. Newsome,

The Independent Lubricant Manufacturers Association (“ILMA” or “Association”) submits these comments on the Federal Trade Commission’s (“FTC” or “Commission”) review of its “Test Procedures and Labeling Standards for Recycled Oil” rule (“ROR”). The ROR was promulgated in 1995, as mandated by the “Energy Policy and Conservation Act” (“EPCA”). It permits manufacturers and other sellers to represent on a recycled engine-oil container label that the oil is substantially equivalent to new engine oil, as long as the determination of equivalency is based on test procedures prescribed by the ROR. The Association advocated for the promulgation of the ROR when it was initially proposed by the FTC. ILMA’s position in 2018 is the same as it was in 1995-- the ROR is essential and should be maintained by the Commission without any significant modification.

**Introduction to ILMA**

ILMA is a national trade association with 350 member companies that is headquartered in Alexandria, Virginia. ILMA’s manufacturing members blend, compound, and sell over 25 percent of the United States’ lubricant needs (*e.g.*, passenger car motor oils, gear oils, and hydraulic fluids) and over 75 percent of the metalworking fluids (“MWFs”) utilized in the country. The overwhelming majority of ILMA’s manufacturing members are “small businesses” based on the Small Business Administration’s size standards. ILMA members, as manufacturers, are classified at NAICS 324191.

Independent lubricant manufacturers are neither owned nor controlled by the companies that explore for or refine crude oil to produce lubricant base stocks or that produce chemical additives. Base oils are purchased from refiners and re-refiners, who are also direct competitors in the sale of finished products. Additives are purchased from suppliers, who also may be direct competitors in the sale of finished products.

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**Vice President, Barbara Kudis**, Allegheny Petroleum Products Company

**Treasurer, Chuck Decker**, American Oil & Supply International LLC

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**Immediate Past President, Beth Ann Jones**,  
Hangsterfer’s Laboratories, Inc.

**Chief Executive Officer, Holly Alfano**

**General Counsel, Jeffrey L. Leiter**

ILMA members succeed over their suppliers/competitors by manufacturing and distributing high-quality, often specialized, lubricants accompanied by localized, allied services to their customers.

Lubricants are essential to the U.S. economy. Americans cannot get to work without the engine oils, transmission fluids and other automotive lubricants in their vehicles. Manufacturers cannot operate most of their machinery without industrial oils and hydraulic fluids. MWFs are used to bend, shape or cut metal for the production or fabrication of automobiles, military equipment, airplanes, medical devices and thousands of other products. ILMA members' products are vital to the economic freedom and prosperity enjoyed by the U.S.

### **Comments on the ROR**

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

There is a continuing need for the ROR, and it should be maintained without any significant modification. Oil and lubricant marketers need certainty to sell effectively their products in all 50 states. If the rule were to be rescinded, some states may elect to require their own container labeling mandates that could result in varying requirements across jurisdictional lines. This potential "patchwork" of state regulations is unworkable for the industry and also could create needless confusion for consumers. The EPCA-mandated rule has worked well for more than two decades and should be kept. Further, the last 22 years have shown that the regulation effectively protects consumers, as oil marketers and lubricant manufacturers must ensure that they can substantiate any "substantially similar" claim in accordance with the American Petroleum Institute ("API") Publication 1509. The ROR is an effective regulatory tool for the FTC to ensure that "junk" is not being marketed, while simultaneously providing consumers with additional choice of lubricants.

ILMA has long advocated for proper labeling of the contents and performance of oils, adopting an enforceable Code of Ethics for its members in 1984. For the past 10 years, the Association has tested randomly its members' engine oils.<sup>1</sup> Nearly 97 percent of all engine oils tested over the last ten years were fully compliant with applicable requirements.<sup>2</sup>

Building on that commitment to quality, ILMA has submitted a proposal to the National Conference on Weights and Measures ("NCWM") to amend its uniform regulations and method of sale requirements for engine oils in Handbook 130. The Association's proposal is largely patterned after California's AB 808 "obsolete oil" prohibition.<sup>3</sup> If adopted, it would address the retail sale of "obsolete" engine oils for on-highway use that, in part, do not meet an active API

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<sup>1</sup> The process is similar to API's Aftermarket Audit Program.

<sup>2</sup> While ILMA tests and monitors those products sold by its membership, it has no ability to "referee" products sold by non-members.

<sup>3</sup> The law effectively bans "obsolete oils" by requiring that engine oils must meet at least one active API classification, one active sequence of the European Automobile Manufacturers Association (ACEA) or one active original equipment manufacturer (OEM) specification. The current API classifications for passenger car motor oils are API SJ, SL, SM and SN.

service classification or OEM specification, ensuring also appropriate labeling for viscosity and brand. Obsolete oils can cause harm to car engines.<sup>4</sup>

Under ILMA's proposal, there would be exemptions for "purpose-built" engine oils, such as those manufactured and sold for hot rods, street rods, antique vehicles, and muscle cars. These products, as appropriate, would be required to continue to be labeled in accordance with SAE J183 and would have to be segregated on retail shelves to avoid consumer confusion and misapplication. ILMA's proposal also includes an exemption for motorcycle oils and for "recreational oils," such as those used in small engines, lawn and garden equipment, marine engines, and recreational vehicles (e.g., ATVs). Overall, the objective is to ensure that consumers are not being misled and that they are adequately informed about the product before purchasing and using it. ILMA has a commitment to quality and appropriate marketing of lubricant products to consumers.<sup>5</sup>

Unfortunately, not all lubricant and oil marketers have the same ethical standards. In conjunction with other legislative and regulatory approaches, the ROR is an effective tool for the FTC to be able to "spotlight" bad actors in the marketplace who are selling misleading or deceptive products to consumers.<sup>6</sup> There is an ongoing need for the ROR.

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

ILMA is unaware of any significant costs that the ROR imposes on consumers. To the contrary, the ROR provides a significant benefit as the general public is afforded additional choice in the marketplace for what products they purchase and use. Choice drives competitors to provide the best products at the most favorable prices.

**(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?***

ILMA is unaware of any significant costs to the industry to comply with the rule beyond the testing requirements outlined in API Publication 1509. However, that testing should be maintained, as it is essential that lubricant producers substantiate that their products are of sufficient quality to protect consumers' vehicles. The ROR provides oil marketers with additional choice in the marketplace as they can elect to purchase virgin or re-refined base stocks to formulate their products.

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<sup>4</sup> See the allegations, for example, in the pending case *In Re: Dollar General Corp. Motor Oil Marketing and Sales Practices Litigation* (Multi-District Litigation Master Case No. 16-02709-MD-W-GAF).

<sup>5</sup> The testing protocols in API Publication 1509 are paramount for ILMA members as it provides a straight forward process for companies to verify its products are "substantially similar" should any questions arise.

<sup>6</sup> See Petroleum Quality Institute of America Sample Summary – Passenger Car Motor Oils:  
[http://pqiamerica.com/PCMO\\_Sample\\_Summary\\_12\\_15\\_2016.html](http://pqiamerica.com/PCMO_Sample_Summary_12_15_2016.html).

**(4) *Recommended Changes:* What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs? How would these modifications affect the costs and benefits of the Rule for consumers? How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?**

The Association echoes the request from NORA – An Association of Responsible Recyclers – to revise the ROR to reference the most recent version of API Publication 1509. ILMA is unaware of any significant cost that the change would impose upon industry or consumers. Given the constantly evolving nature of vehicle standards, the ROR should be revised to reference the most recent version of API Publication 1509. This will ensure that industry is appropriately testing their products in accordance with current procedures and protocols to ensure compatibility with modern engines.

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

Before marketing to the general public, the ROR appropriately mandates that lubricant manufacturers test their products made with recycled oils to ensure they are substantially similar to those using “virgin” oils. ILMA members are very familiar with those requirements and it ensures that their products are appropriately labeled with mandatory information. The ROR has created a reasonable set of requirements for lubricant marketers to comply with, and, in turn, consumers have benefitted from the information mandated by the FTC. Additionally, businesses have a significant incentive to ensure compliance, as any accusations or convictions for false marketing claims would be incalculably devastating to a company’s reputation. Further, the threat of a \$21,250 fine<sup>7</sup> for a ROR labeling violation or a maximum civil violation up to \$40,000 also provides an effective deterrent for any company to even consider circumventing the regulatory requirements of the ROR.

**(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 not, why not?**

ILMA is unaware of any issue(s) with ROR non-compliance. Again, the ROR has been in effect for decades and industry is familiar with its mandates. The testing called for in the ROR is reasonable and necessary. As discussed in response to question one above, the Association adopted an enforceable Code of Ethics that randomly tests members’ engine oils. Nearly 97 percent of all engine oils tested over the last ten years were fully compliant with claims made on the container label regarding the product’s performance.

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<sup>7</sup> The penalties were increased in 2016 in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2016.

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

The ROR is clear and concise. It outlines the requirements that oil and lubricant marketers must comply with in order to sell products containing re-refined oil, and it simultaneously protects consumers. Other than the revision to reference the most recent version of API Publication 1509, the ROR should be maintained "as is."

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

Engine oils are constantly evolving, in part, to keep pace with increasingly strict fuel economy requirements mandated by the Corporate Average Fuel Economy ("CAFE") standards, similarly promulgated under the EPCA. OEMs look to lubricant producers to provide more efficient engine, transmission and drivetrain technologies for motor vehicles, largely to meet those governmental mileage and emissions standards. Automakers are specifying lower viscosity, higher-quality lubricants, including engine oils, causing the market to shift to higher-grade base oils and modify additive packages, to meet the specifications and market demand. Technological trends overall are pushing marketers towards more efficient products. However, those market realities are not inconsistent with the ROR. Re-refined products can be effectively utilized and incorporated into modern engine oils without any reduction in product effectiveness or efficiency.

**(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.**

The rule provides clear preemption language that effectively precludes states and local governments from enacting laws and regulations that conflict with the ROR. Additionally, ILMA is unaware of any federal laws or regulations that overlap or conflict with the ROR.

Separately, in relation to deceptive practices and as discussed in response to question one above, ILMA has submitted an obsolete oils proposal to the NCWM. However, nothing in the ROR is inconsistent with that proposal. Marketers using recycled products would still be required to test their oils in accordance with API Publication 1509.

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**(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?**

Yes, as previously stated, it is appropriate for the FTC to update its reference to API Publication 1509. However, the update should reference the most recent edition of the document, not the Seventeenth Edition. Otherwise, the FTC would need to constantly update its ROR to reference the then-current version of API Publication 1509.

### **Conclusion**

ILMA appreciates this opportunity to comment and respectfully requests that the FTC maintain its ROR without modification other than referencing the most current edition of API Publication 1509.

Sincerely,

  
Holly Alfano  
CEO

cc: ILMA Board of Directors  
Jeffrey L. Leiter, Esq.  
Daniel T. Bryant, Esq.