



Comments of
NORA, An Association of Responsible Recyclers
on the proposed rule by the Federal Trade Commission
specifying test procedures and labeling standards
for recycled oil
82 Federal Register 60334-35, December 20, 2017

16 CFR Part 311
Recycled Oil Matter No. R811006

DEFENDING THE RIGHTS OF NORA MEMBERS TO RESPONSIBLY RECYCLE USED OIL AND RELATED MATERIALS

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NORA, An Association of Responsible Recyclers (“NORA”), formerly the National Oil Recyclers Association, welcomes this opportunity to submit comments on the proposed rule to specify test procedures and labeling standards for recycled oil (“the recycled oil rule” or “the Rule.”) NORA is a national trade association, founded in 1984, whose members recycle used oil and other recyclable materials such as antifreeze, parts cleaning solvents, oil filters, and wastewater. Oil recycling produces two different products: industrial fuels and re-refined lubricants. The Commission’s proposed rule, originally promulgated in October 1995, is concerned with re-refined lubricants.

NORA fully supports the renewal of the recycled oil rule. The Rule is mandated by the Energy Policy and Conservation Act (“EPCA”), which is codified at 42 U.S.C. §6363. As explained in 42 U.S.C. §6363(a), the purposes of the rule are to encourage used oil recycling, promote the use of re-refined (recycled) oil, reduce the consumption of virgin oil lubricants, and reduce environmental hazards and wasteful practices associated with the disposal of used oil. The renewal of the recycled oil rule will continue the fulfillment of these important goals.

The Commission requested that commenters focus on 10 questions. NORA offers the following responses to these questions.

“Is there a continuing need for the Rule?” Yes. In recent years, re-refined automotive lubricants have earned a growing share of the lubrication market. In the past, re-refined lubricants were stigmatized by a general perception that re-refining produced a lubricant that was inferior in quality to lubricants produced from virgin petroleum. Gradually this stigma has faded, in large measure because the Rule

allows and even encourages re-refiners to meet the standards set forth in API Publication 1509. When a re-refined lubricant meets those standards, the re-refiner can justifiably assert that the re-refined product is “substantially similar” to oil produced from virgin petroleum. Of course, the re-refiner must be able to substantiate and document the truth of such assertions. This is no small task. API Publication 1509 (17th Edition) is over 130 pages in length and can only be fully understood by experts in lubricants. When the Commission originally adopted the Rule, the National Institute of Standards and Technology recommended API Publication 1509 as the definitive set of standards for engine oil. Simply stated, it sets forth a series of tests and standards for different categories of automotive lubricants. For example, the standards for motor oil encompass catalyst compatibility, phosphorus content, sulfur content, wear phosphorus content, volatility evaporation loss, simulated distillation, high temperature deposit weight, filterability, foaming characteristics tendency, high temperature foaming characteristics tendency, and shear stability (10-hour stripped KV @ 100°C). A re-refiner’s ability to meet these stringent standards means that re-refined lubricants can be competitive with lubricants made from virgin petroleum.

Equally important, the Energy Policy and Conservation Act *requires* that the Federal Trade Commission adopt and maintain a recycled oil rule – although it may be amended from time to time. NORA, whose re-refiner members are most affected by the Rule, strongly recommends that the Commission retain this rule.

In addition, the Rule indirectly encourages a consumer demand for re-refined lubricants. This creates an important environmental benefit. As long as used oil has value, whether as a fuel or a re-refined lubricant, there is an incentive for the recycling system to collect every drop of used oil generated by millions of individuals

and businesses (such as quick lube oil changers). However, if used oil had no value the economic incentive to collect it would be erased. If that occurred the United States would face a massive and expensive disposal problem. By allowing re-refiners (following successful testing) to label their products as “substantially similar” to lubricants made from virgin petroleum, the Rule indirectly promotes a demand for re-refined lubricants thereby giving value to used oil.

(2) What benefits has the Rule provided to consumers, and does the Rule impose any significant costs on consumers? NORA is not aware of *any* costs to consumers resulting from the Rule.

The Rule and its adoption of API Publication 1509 provides a very important benefit to consumers. Consumers have the assurance that when manufacturers of re-refined lubricants label them as “substantially similar” to lubricants made from virgin petroleum, the claim is accurate and backed up by test data.¹ Consumers then have a choice in lubricants – but no loss of quality if they choose the re-refined product. Also, with re-refined lubricants attaining a growing market share, there is increased competition in the lubricants industry. Competition imposes downward pressure on prices, thereby benefitting the consumer.

¹ Any false certification of compliance with the Rule would be subject to enforcement action through civil penalties as well as criminal penalties (including imprisonment) and/or injunctive relief in accordance with the enforcement provisions of Section 525 of the Energy Policy and Conservation Act, 42 U.S.C. 6395. See also 60 *Federal Register* 55421, October 31, 1995, as amended at 65 *Federal Register* 69666, November 20, 2000.

Another benefit re-refined oil is the reduced carbon dioxide footprint. Base oils produced by re-refiners have a significantly lower CO₂ footprint than base oils produced out of virgin crude oil.

(3) What benefits, if any, has the Rule provided to businesses, and does the Rule impose any significant costs including the costs of compliance on businesses including small businesses? All of the benefits described in response to the Commission's second question apply to businesses in their role as consumers. The costs of compliance with the Rule is borne by re-refiners who must conduct the testing necessary to verify that the re-refined lubricant meets applicable standards set forth in API Publication 1509. However, that is a necessary and acceptable cost. Moreover, it is a cost imposed on the entire lubricants industry - not just re-refiners.

(4) What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs? NORA recommends only one change. The Rule's provision on testing (16 CFR §311.4) refers to API Publication 1509 (Fifteenth edition). The current and updated API Publication 1509 is the Seventeenth edition. Obviously, the technology of engine lubrication continuously advances and changes. The Rule should be modified to refer to the most recent edition of the API Publication 1509. That approach would keep the Rule continuously up to date and preclude the need for an amendment every time a new edition of API Publication 1509 is published.

(5) What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers? As previously stated, a re-refiner who makes the claim that its re-refined lubricant is substantially similar to lubricants made from virgin petroleum can do so only if

testing data confirms the truth of such claim. The testing data is the most important flow of truthful information to consumers relating to the Rule because it will verify re-refiners' assertions. In addition, under API's After Market Audit Program the API independently obtains and tests lubricants from the market place to ensure they meet the original certified quality level, providing consumers with confidence that both virgin and re-refined oils meet the required standards of quality.

In other words, consumers can have full confidence in the performance quality of re-refined lubricants.

Although NORA is unaware of any deceptive information being circulated by re-refiners, there is little incentive to be engaged in that kind of conduct. First, once discovered, it would ruin the business reputation of the deceiving company. That would constitute an enormous financial risk. Second, false or misleading test data would subject individuals and corporations to stringent civil and criminal penalties as well as injunctive relief. The Commission has recently raised the maximum penalty for a civil violation of the Rule from \$16,000 to \$40,000.

(6) Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? As previously stated, NORA and its members are not aware of any incidents of noncompliance, which would involve falsification of testing data. Several internet searches have not revealed any violations of the Rule. Consequently, no modification of the Rule relating to compliance is warranted.

(7) Provide any evidence concerning whether any of the Rule's provisions are no longer necessary. Since 1984 NORA has analyzed many

environmental regulations, both state and federal. Some of these regulations are complex and difficult to comprehend such as EPA's PCB regulations promulgated pursuant to the Toxic Substances Control Act. In contrast, the Commission's recycled oil rule is simple, clear and straightforward. It consists of six short provisions that address definitions, preemption, testing, labeling, enforcement and prohibited acts. All of these are necessary for the Rule to function effectively. Accordingly, NORA does not recommend rescinding any of these provisions.

(8) What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions? As discussed in NORA's responses to the first four of the Commission's questions, API Publication 1509 is periodically updated to address technological changes in the production of automotive lubricants. If the Rule is amended to reference the most recent edition of API Publication 1509, the Rule will keep pace with technological innovations as they are implemented. It is highly unlikely that the lubricants manufacturing industry in the United States or, in particular, the American Petroleum Institute would allow API Publication 1509 (now in its 17th edition) to become outdated.

(9) Does the Rule overlap with other federal, state or local laws or regulations? The Rule contains a provision, 16 CFR §311.3, which states:

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of § 311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by § 311.5 of this part.

This provision effectively prevents any state or local government from adopting any overlapping or conflicting laws or regulations. Nor is there any conflicting or overlapping federal law or regulation. NORA is very familiar with EPA's regulations governing the management of used oil, 40 CFR Part 279. This set of regulations addresses a wide range of used oil activities, such as processing, testing, and transportation of used oil. However, 40 CFR Part 279 contains no rule relating to the testing and/or labeling of re-refined lubricant products.

(10) Should the Commission update the Rule to incorporate by reference the current version (i.e., the Seventeenth Edition) of API Publication 1509? NORA addressed this question in response to the Commission's fourth question: "The Rule should be modified to refer to the most recent edition of the API Publication 1509. That approach would keep the Rule continuously up to date and preclude the need for an amendment every time a new edition of API Publication 1509 is published."

Finally, NORA believes that the definitions set forth in section 311.1 of the Rule warrant further review. As previously stated, members of the oil recycling industry regard oil recycling as producing two different products: industrial fuel and re-refined lubricants. For example, "processed used oil" (as defined in section 311.1(c) means re-refined used oil while in 40 CFR Part 279 processed used oil means used oil that has undergone one or more forms of processing to produce a fuel. Similarly, in the oil recycling industry "recycled oil" refers to both used oil processed for use as a fuel as well as re-refined lubricants. However, according to the Rule, "recycled oil" means re-refined oil that has been successfully tested pursuant to section 311.4. In addition, there is considerable overlap in the Rule's definitions of "processed used oil," "recycled oil," and "re-refined oil." The need

for modifications in the definitions section of the Rule does not affect NORA's recommendation that the Rule be renewed. Nevertheless, NORA would like to work with the Commission on enhancing the definitions section to create greater precision.

Respectfully submitted,


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