



**[Billing Code: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**16 CFR Part 311**

**RIN: 3084-AB48**

**Test Procedures and Labeling Standards for Recycled Oil**

**AGENCY:** Federal Trade Commission (“FTC” or “Commission”).

**ACTION:** Advance notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) requests public comment on the overall costs, benefits, and regulatory and economic impact of its rule specifying Test Procedures and Labeling Standards for Recycled Oil (“Recycled Oil Rule” or “Rule”), as part of the Commission’s systematic review of all current FTC rules and guides.

**DATES:** Comments must be received on or before February 12, 2018.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “16 CFR Part 311 – Recycled Oil, Matter No. R811006” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/RecycledOilReview>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex A), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex A), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, CC-9528, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Recycled Oil Rule, mandated by the Energy Policy and Conservation Act (“EPCA”) (42 U.S.C. 6363), contains testing and labeling requirements for recycled engine oil. As indicated in the statute, the Rule’s purpose is to encourage used oil recycling, promote recycled oil use, reduce new oil consumption, and reduce environmental hazards and wasteful practices associated with used oil disposal.<sup>1</sup> The Rule, initially promulgated in 1995 (60 FR 55414 (Oct. 31, 1995)), allows manufacturers to represent that processed used engine oil is substantially equivalent to new oil as long as they substantiate such claims using American Petroleum Institute (API) Publication 1509 (Engine Oil Licensing and Certification System).<sup>2</sup> The Rule does not require manufacturers to explicitly state that their engine oil is substantially equivalent to new oil, nor does it mandate any specific qualifiers or disclosures.<sup>3</sup>

**II. Regulatory Review Program**

The Commission reviews its rules and guides periodically to seek information about their costs and benefits, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry avoid deceptive claims. These reviews assist the Commission in

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<sup>1</sup> 42 U.S.C. 6363(a).

<sup>2</sup> Under EPCA (42 U.S.C. 6363(c)), the National Institute of Standards and Technology (“NIST”) must develop (and report to the FTC) applicable standards for determining the substantial equivalence of processed used engine oil with new engine oil. NIST recommended API 1509 when the Commission originally promulgated the Rule.

<sup>3</sup> 60 FR at 55418–55419.

identifying rules and guides that warrant modification or rescission. As part of its last review in 2007, the Commission determined to retain the Rule and updated the reference to API Publication 1509, Fifteenth Edition, and added an explanation of incorporation by reference in § 311.4.<sup>4</sup>

With the present Notice, the Commission initiates a new review. The Commission solicits comments on, among other things, the economic impact of, and the continuing need for, the Recycled Oil Rule; the Rule's benefits to consumers; and the burdens it places on industry members subject to the Rule's requirements, including small businesses.

### **III. Issues for Comments**

To aid commenters in submitting information, the Commission has prepared the following specific questions related to the Recycled Oil Rule. The Commission seeks comments on these and any other issues related to the Rule's current requirements. In their replies, commenters should provide any available evidence and data that supports their position, such as empirical data, consumer perception studies, and consumer complaints.

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

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

(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?

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<sup>4</sup> 72 FR 14410, 14413 (March 28, 2007).

(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?

(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?

(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?

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

(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?

(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.

(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?<sup>5</sup> If so, should the incorporation include a specific date or other information to identify the seventeenth edition of API Publication 1509?

#### **IV. Comment Submissions**

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 12, 2018. Write “16 CFR Part 311 – Recycled Oil, Matter No. R811006” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/RecycledOilReview>, by following the instructions on the web-based form. When this Notice appears at <https://www.regulations.gov>, you also may file a comment through that Web site.

If you prefer to file your comment on paper, write “16 CFR Part 311 – Recycled Oil, Matter No. R811006” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex A), Washington, DC 20580, or deliver your comment to

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<sup>5</sup> The current Rule (Section 311.4) references the Fifteenth Edition of API Publication 1509.

the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex A), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Web site at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance

with the law and the public interest. Once your comment has been posted on the public FTC Web site—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC Web site, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Web site to read this Notice and the news release describing it. The FTC Act and other laws that 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 on or before February 12, 2018. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

Donald S. Clark  
Secretary.

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