Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 406

Deceptive Advertising and Labeling of Previously Used Lubricating Oil

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the ''Commission'') announces the commencement of a rulemaking proceeding for the Trade Regulation Rule on Deceptive Advertising and Labeling of Previously Used Lubricating Oil (''the Used Oil Rule'' or ''the Rule''), 16 CFR Part 406. The proceeding will address whether or not the Used Oil Rule should be repealed. The Commission invites interested parties to submit written data, views, and arguments on how the Rule has affected consumers, businesses and others, and on whether there currently is a need for the Rule. This document includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before August 26, 1996. Notifications of interest in testifying must be submitted on or before August 26, 1996. If interested parties request the opportunity to present testimony, the Commission will publish a document in the Federal Register stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before August 26, 1996, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESS: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Ave., NW., Washington, DC 20580, telephone number (202) 326–2506. Comments and requests to testify should be identified as ''16 CFR Part 406 Comment—Used Oil Rule'' and ''16 CFR Part 406 Request to Testify—Used Oil Rule,'' respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Sixth Street and Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking (''NPR'') the Commission initiates a proceeding to consider whether the Used Oil Rule should be repealed or remain in effect.[1] The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

Based on the Commission's finding that the new or used status of a lubricant was material to consumers, the Used Oil Rule was promulgated by the Commission on August 14, 1964, to prevent deception of consumers who prefer new and unused lubricating oil. The Rule requires that advertising, promotional material, and labels for lubricant made from used oil disclose such previous use. The Rule prohibits any representation that used lubricating oil is new or unused. In addition, it prohibits use of the term ''re-refined,'' or any similar term, to describe previously used lubricating oil unless the physical and chemical contaminants have been removed by a refining process.

On October 15, 1980, the Used Oil Recycling Act suspended the provision of the Used Oil Rule requiring labels to disclose the origin of lubricants made from used oil,[2] until the Commission issued rules under the Energy Policy and Conservation Act of 1975 (''EPCA''). The legislative history indicates Congressional concern that the Used Oil Rule's labeling requirement had an adverse impact on consumer acceptance of recycled oil, provided no useful information to consumers concerning the performance of the oil, and inhibited recycling. Moreover, the origin labeling requirements in the Used Oil Rule arguably are inconsistent with the intent of section 383 of EPCA, which is that ''oil should be labeled on the basis of performance characteristics and fitness for intended use, and not on the basis of the origin of the oil.'' [3]

Accordingly, on April 8, 1981, the Commission published a notice announcing the statutory suspension of the origin labeling requirements of the Used Oil Rule. In the same notice, the Commission suspended enforcement of those portions of the Used Oil Rule requiring that advertising and promotional material disclose the origin of lubricants made from used oil.[4]

The purposes of the recycled oil section of EPCA are to encourage the recycling of used oil, to promote the use of recycled oil, to reduce consumption of new oil by promoting increased utilization of recycled oil, and to reduce environmental hazards and wasteful practices associated with the disposal of used oil.[5] To achieve these goals, section 383 of EPCA directs the National Institute of Standards and Technology (''NIST'') to develop test procedures for the determination of the substantial

[1] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate, and the Chairman of the Committee on Commerce, United Stats House of Representatives, 30 days prior to its publication in the Federal Register.

[2] 42 U.S.C. 6363 note.

[3] *See* Legislative History Pub. L. 96–463, U.S. Code Cong. and Adm. News, pp. 4354–4356 (1980).

[4] 46 FR 20979.

[5] 42 U.S.C. 6363(a).

equivalency of re-refined or otherwise processed used oil or blend of oil (consisting of such re-refined or otherwise processed used oil and new oil or additives) with new oil distributed for a particular end use and to report such test procedures to the Commission.[6] Within 90 days after receiving such report from NIST, the Commission is required to prescribe, by rule, the substantial equivalency test procedures, as well as labeling standards applicable to containers of recycled oil.[7] EPCA further requires that the Commission's rule permit any container of processed used oil to bear a label indicating any particular end use, such as for use as engine lubricating oil, so long as a determination of ''substantial equivalency'' with new oil has been made in accordance with the test procedures prescribed by the Commission.[8]

On July 27, 1995, NIST reported to the Commission test procedures for determining the substantial equivalency of re-refined or otherwise processed used engine oils with new engine oils. Accordingly, to implement EPCA's statutory directive, on October 31, 1995, the Commission issued a rule (covering recycled engine oil) entitled Test Procedures and Labeling Standards for Recycled Oil (''Recycled Oil Rule''), 16 CFR part 311.[9] The Recycled Oil Rule adopts the test procedures developed by NIST, and allows (although it does not require) a manufacturer 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 the NIST test procedures.

The EPCA further provides that once the Recycled Oil Rule becomes final, no Commission order or rule, and no law, regulation, or order of any State (or political subdivision thereof), may remain in effect if it has labeling requirements with respect to the comparative characteristics of recycled oil with new oil that are not identical to the labels permitted by this rule.[10] Also, no rule or order of the Commission may require any container of recycled oil to also bear a label containing any term, phrase, or description connoting less than substantial equivalency of such recycled oil with new oil.[11]

Under EPCA, the Recycled Oil Rule preempts the Used Oil Rule's labeling and advertising requirements for engine oils. For non-engine oils, the Used Oil Rule's labeling disclosure provisions continue to be subject to the Congressional stay, and the advertising disclosure provisions continue to be subject to the Commission's stay. The only part of the Used Oil Rule not affected by the stays is that section which prohibits the deceptive use of the term ''re-refined.'' In light of the ongoing stays, when the Commission published the Recycled Oil Rule in October 1995, it stated that, as part of its regulatory review process, it would consider the continuing need for the Used Oil Rule.[12]

Based on the foregoing, on April 3, 1996, the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') stating that it had tentatively determined that a separate Used Oil Rule is no longer necessary, and seeking comments on the proposed repeal of the Rule.[13] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate, and the Chairman of the Committee on Commerce, United States House of Representatives.

The ANPR comment period closed on May 3, 1996. The Commission received one comment in response to the ANPR.[14] The comment was submitted by the Safety-Kleen Corporation (''Safety-Kleen''), a re-refiner of used oil. Safety-Kleen supports repeal of the Commission's Used Oil Rule, stating that it has been superseded effectively in the marketplace by the FTC's Recycled Oil Rule.[15]

Accordingly, after reviewing the comment submitted, and in light of promulgation of the Recycled Oil Rule, the Commission has determined that to eliminate unnecessary duplication, and any inconsistency with EPCA's goals, a separate Used Oil Rule is no longer necessary.[16] The Commission, therefore, seeks comments on the proposed repeal of the Used Oil Rule.

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the Rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a notice published in the Federal Register.

IV. Invitation To Comment and Questions for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Commenters opposing the proposed repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or

[6] 42 U.S.C. 6363(c).

[7] 42 U.S.C. 6363(d).

[8] 42 U.S.C. 6363(d)(1)(B).

[9] 60 FR 55414 (Oct. 31, 1995).

[10] 42 U.S.C. 6363(e)(1).

[11] 42 U.S.C. 6363(e)(2).

[12] 60 FR 55414, 55417.

[13] 61 FR 14686.

[14] The comment submitted in response to the ANPR has been placed on the public record, Commission Rulemaking Record No. R511959, and is coded ''D'' indicating that it is a public comment. In this notice, the comment is cited by identifying the commenter (by abbreviation), the comment number, and the relevant page number.

[15] Safety-Kleen, D–1, 1.

[16] Repealing the Used Oil Rule would eliminate the Commission's ability to obtain civil penalties for any future misrepresentations of the re-refined quality of oil. Nevertheless, the Commission has tentatively determined that repealing the Rule would not seriously jeopardize the Commission's ability to act effectively. The Recycled Oil Rule defines re-refined oil to mean used oil from which physical and chemical contaminants acquired through use have been removed. Although this Rule does not further address re-refined oil or provide penalties for misrepresenting used oil as ''re-refined,'' it defines for the public how the Commission interprets this term. Any significant problems that may arise could be addressed on a case-by-case basis, administratively under section 5 of the FTC Act, 15 U.S.C. 45, or through section 13(b) actions, 15 U.S.C. 53(b), filed in federal district court. Prosecuting serious misrepresentations in district court allows the Commission to obtain injunctive relief as well as equitable remedies, such as redress or disgorgement.

deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this Notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5 p.m. at the Federal Trade Commission, Public Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number (202) 326–2222.

Questions

(1) Should the Used Oil Rule be kept in effect, or should it be repealed?

(2) What benefits do consumers derive from the Rule?

(3) How would repealing the Rule affect the benefits experienced by consumers?

(4) How would repealing the Rule affect the benefits and burdens experienced by firms subject to the Rule's requirements?

(5) Is misrepresentation of used oil as ''re-refined'' a significant problem in the marketplace?

(6) Are there any other federal, state, or local laws or regulations, or private industry standards, that eliminate the need for the Rule?

(7) Is the Commission's Recycled Oil Rule likely to provide all or most of the benefits now provided by the Used Oil Rule?

V. Requests for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESS** sections of this notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–12, requires an analysis of the anticipated impact of the proposed repeal of the Rule on small businesses.[17] The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. The Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

For these reasons, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that if the Commission determines to repeal the Rule that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Used Oil Rule imposes third-party disclosure requirements that constitute ''information collection requirements'' under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* On October 15, 1980, however, the Used Oil Recycling Act suspended the provision of the Used Oil Rule requiring labels to disclose the origin of lubricants made from used oil,[18] until the Commission issued rules under EPCA. Further, on April 8, 1981, the Commission published a notice announcing the statutory suspension of the origin labeling requirements of the Used Oil Rule. In the same notice, the Commission suspended enforcement of those portions of the Used Oil Rule requiring that advertising and promotional material disclose the origin of lubricants made from used oil.[19] Since 1981, therefore, the Rule effectively has imposed no paperwork burdens on marketers of used lubricating oil. In any event, repeal of the Used Oil Rule would permanently eliminate any burdens on the public imposed by these disclosure requirements.

VIII. Additional Information For Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors.

Pursuant to Rule 1.18(c) of the Commission's rules of practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the

[17] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to issue a preliminary regulatory analysis relating to proposed rules when the Commission publishes a notice of proposed rulemaking. The Commission has determined that a preliminary regulatory analysis is not required by section 22 in this proceeding because the Commission has no reason to believe that repeal of the Rule: (1) Will have an annual effect on the national economy of $100,000,000 or more; (2) will cause a substantial change in the cost or price of goods or services that are used extensively by particular industries, that are supplied extensively in particular geographical regions, or that are acquired in significant quantities by the Federal Government, or by State or local governments; or (3) otherwise will have a significant impact upon persons subject to the Rule or upon consumers.

[18] 42 U.S.C. 6363 note.

[19] 46 FR 20979.

transcript or summary will be placed promptly on the public record.

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 406

Advertising, Labeling, Trade practices, Used lubricating oil.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–19009 Filed 7–25–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–26–94]

RIN 1545–AU34

Qualified Small Business Stock; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to notice of proposed rulemaking and notice of public hearing (IA–26–94) which was published in the Federal Register on Thursday, June 6, 1996 (61 FR 28821). The notice of proposed rulemaking and notice of public hearing relates to the 50-percent exclusion for gain from certain small business stock.

FOR FURTHER INFORMATION CONTACT: Catherine A. Prohofsky (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is subject to these corrections are under section 1202 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (IA–26–94) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of proposed rulemaking (IA–26–94) which is the subject of FR Doc. 96–14231 is corrected as follows:

1. On page 28821, column 3, in the preamble, under the caption **DATES:**, lines 3 and 4, the language ''public hearing scheduled for October 3, 1996 must be'' is corrected to read ''public hearing scheduled for October 3, 1996, must be''.

§ 1.1202–0 [Corrected]

2. On page 28822, column 3, § 1.1202–0, table of contents, the entries for paragraphs (b) (1) and (2) under § 1.1202–2, are corrected to read as follows:

§ 1.1202–0 Table of contents.

* * * * *

§ 1.1202–2 Qualified Small Business Stock; Effect of Redemptions.

* * * * *

(b) * * *

(1) In general.

(2) De minimis amount.

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–19006 Filed 7–25–96; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5541–5]

Deletion of a Site from the National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the AMP Site in Glen Rock, PA, from the National Priorities List; Request for Comments.

SUMMARY: The Environmental Protection Agency (''EPA'') announces its intent to delete the AMP Site (''Site''), located in Glen Rock, Pennsylvania, from the National Priorities List (''NPL'') and requests public comment. The NPL, a list of sites EPA evaluates for priority cleanup of hazardous wastes, is found in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, Appendix B. EPA promulgated the NCP pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'').

EPA proposes this deletion under the terms of a policy published in the Federal Register on March 20, 1995. In this policy EPA announced that, consistent with NCP criteria for deletion of sites from the NPL, the Agency would delete sites if corrective action was proceeding pursuant to the Resource Conservation and Recovery Act (''RCRA''). EPA, in consultation with the Commonwealth of Pennsylvania, has determined that this deferral to RCRA authorities is appropriate.

DATES: Comments may be submitted on or before August 26, 1996.

ADDRESSES: Comments should be mailed to Frank Vavra, Remedial Project Manager, Superfund Branch—3HW22, 841 Chestnut Street, Philadelphia, Pennsylvania 19107.

The Deletion Docket is available for inspection at the following locations and times: 1) U.S. EPA Region III, Hazardous Waste Management Division, 841 Chestnut Street, Philadelphia, PA, from 9:00 a.m. to 5:00 p.m. during Monday through Friday; 2) Martin Library, 159 East Market Street, York, PA, from 9:00 a.m. to 9:00 p.m. Monday through Thursday, from 9:00 a.m. to 5:00 p.m. on Friday, and from 9:00 a.m. to 12:00 noon on Saturdays during the summer (contact Ms. Rebecca Shives, Head of Reference).

FOR FURTHER INFORMATION CONTACT: For additional information on the AMP Site, contact Frank Vavra at the above address or phone 215–566–3221.

SUPPLEMENTARY INFORMATION:

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IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (''EPA'') Region III announces its intent to delete the AMP Site from the National Priorities List (''NPL''), 40 CFR part 300, and requests comments on this deletion. EPA will accept comments on the deletion of this Site for thirty days after publication of this notice in the Federal Register.

The NPL is a list of sites that EPA evaluates for priority cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601, *et seq.* Listing of a site on the NPL does not, itself, create, alter or revoke any individual rights or obligations under CERCLA, or any other law. The NPL is designed primarily for information purposes and to assist Agency management. Sites on the NPL may be remediated using the Hazardous Substances Superfund (''Superfund'' or ''Fund'') established by section 9507 of the Internal Revenue Code of 1986. Use of this fund for cleanup of hazardous substances is governed by section 111 of CERCLA, 42 U.S.C. 9611, and implementing regulations.