

administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements." 16 CFR 1.5. Conduct inconsistent with the guides may result in corrective action by the Commission under applicable statutory provisions.

The Private Vocational Schools Guides provide guidance about acceptable and unacceptable claims made in advertising, or other promotional materials, however disseminated, for resident or correspondence courses or training or instruction programs by private career or vocational schools. Specifically, the guides pertain to claims about the nature of the school, its accreditation, programs of instruction or methods of teaching and available employment opportunities. The guides also include provisions on representations concerning financial assistance, appropriate disclosures as to the nature of courses or training programs offered, pictorial or other misrepresentations, deceptive prices, and sales, collection and credit practices.

Accordingly, the Commission solicits public comments on the following questions:

1. Is there a continuing need for the Guides?
 - a. What benefits have the Guides provided to purchasers of the products or services affected by the Guides?
 - b. Have the Guides imposed costs on purchasers?
2. What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?
 - a. How would these changes affect the costs the Guides impose on firms subject to their requirements?
3. What significant burdens or costs, including costs of adherence, have the Guides imposed on firms subject to their requirements?
 - a. Have the Guides provided benefits to such firms?
4. What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on firms subject to their requirements?
 - a. How would these changes affect the benefits provided by the Guides?
5. Do the Guides overlap or conflict with other federal, state, or local laws or regulations?
6. Since the Guides were issued, what effects, if any, have changes in relevant technology or economic conditions had on the Guides?
7. Are there problems today in the marketing of vocational school programs or correspondence courses? If yes, what is the nature of these problems? Do the

Guides adequately address any problems that may exist?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 254

Advertising, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

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16 CFR Part 406

Deceptive Advertising and Labeling of Previously Used Lubricating Oil

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the "Commission") proposes to commence a rulemaking proceeding to repeal its 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 Commission is soliciting written comments, data, and arguments concerning this proposal. The Commission also is requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides.

DATES: Written comments must be submitted on or before May 3, 1996.

ADDRESSES: Written comments should be identified as "16 CFR Part 406 Comment" and sent to Secretary, Federal Trade Commission, room 159, Sixth Street and Pennsylvania Ave., NW., Washington, DC 20580.

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

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is being published pursuant to Section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7 *et seq.*, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning

of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

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 those 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,¹ 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 may be 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."²

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.³

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.⁴ To achieve these goals, section 383 of EPCA directs the National Institute of Standards and Technology

¹ 42 U.S.C. 6363 note.

² See Legislative History Pub. L. 96–463, U.S. Code Cong. and Adm. News, pp. 4354–4356 (1980).

³ 46 FR 20979.

⁴ 42 U.S.C. 6363(a).

("NIST") to develop test procedures for the determination of the substantial 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.⁵ 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.⁶ 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.⁷

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. To implement EPCA's statutory directive, therefore, the Commission issued, and thereafter published on October 31, 1995, a rule (covering recycled engine oil) entitled *Test Procedures and Labeling Standards for Recycled Oil* ("Recycled Oil Rule"), 16 CFR Part 311.⁸ 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.⁹ 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.¹⁰

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." When the Commission published the Recycled Oil Rule in October 1995, it also stated that as part of its regulatory review process, it would consider the continuing need for the Used Oil Rule.¹¹

Part B—Objectives

Based on the foregoing, the Commission has tentatively determined that to eliminate unnecessary duplication, and any inconsistency with EPCA's goals, a separate Used Oil Rule is no longer necessary.¹² The objective of this notice is to solicit comment on whether the Commission should initiate a rulemaking proceeding to repeal the Used Oil Rule.

Part C—Alternative Actions

The Commission is not considering any alternative other than the possibility of repealing the Used Oil Rule.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Used Oil Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies the issues on which it solicits public comments. The identification of issues is designed to assist the public and should not be

construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Is there a continuing need for the Rule?

(a) What benefits has the Rule provided to purchasers of the products affected by the Rule?

(b) Has the Rule imposed costs on purchasers?

(2) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?

(a) How would these changes affect the costs the Rule imposes on firms subject to its requirements?

(3) What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements?

(a) Has the Rule provided benefits to such firms?

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

(a) How would these changes affect the benefits provided by the Rule?

(5) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

(7) Is misrepresentation of the re-refined quality of used lubricating oil by manufacturers and distributors of such oil a significant problem in the marketplace?

(8) Should the Rule, or any portion of it, be kept in effect, or should it be repealed?

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

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

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

Authority: Section 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR Part 406

Advertising, Labeling, Trade practices, Used lubricating oil.

By direction of the Commission.

Donald S. Clark,

Secretary.

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⁵ 42 U.S.C. 6363(c).

⁶ 42 U.S.C. 6363(d).

⁷ 42 U.S.C. 6363(d) (1) (B).

⁸ 60 FR 55414 (Oct. 31, 1995).

⁹ 42 U.S.C. 6363(e)(1).

¹⁰ 42 U.S.C. 6363(e)(2).

¹¹ 60 FR 55414, 55417.

¹² 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. However, 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. Any significant problems that might 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.