PART 28—NEW RESTRICTIONS ON LOBBYING

4. The authority for 15 CFR part 28 is revised to read as follows:

Authority: Sec. 319, Pub. L. 101–121 (31 U.S.C. 1352; 5 U.S.C. 301; Sec. 4, as amended, and sec. 5, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321, 28 U.S.C. 2461 note.

5. Part 28 is amended by revising § 28.400(a) and (b) and (e) to read as follows:

§ 28.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure made on or before October 23, 1996, and of not less than $11,000 and not more than $110,000 for each such expenditure made after October 23, 1996.

(b) Any person who fails to file or amend the disclosure form (see Appendix B of this part) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure occurring on or before October 23, 1996, and of not less than $11,000 and not more than $110,000 for each such failure occurring after October 23, 1996.

* * * * *

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances for each such offense committed on or before October 23, 1996, and $11,000 for each such offense committed after October 23, 1996. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000 for each such offense committed on or before October 23, 1996, and between $11,000 and $110,000 for each such offense committed after October 23, 1996, as determined by the agency head or his or her designee.

* * * * *

6. Part 28 is further amended by revising paragraph (3) and all that follows of Appendix A.

Appendix A to Part 28—Certification Regarding Lobbying

* * * * *

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure occurring on or before October 23, 1996, and of not less than $11,000 and not more than $110,000 for each such failure occurring after October 23, 1996.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure occurring on or before October 23, 1996, and of not less than $11,000 and not more than $110,000 for each such failure occurring after October 23, 1996.

[FR Doc. 96–27403 Filed 10–22–96; 12:31 pm]

BILLING CODE 3510–17–P

FEDERAL TRADE COMMISSION

16 CFR Part 406

Deceptive Advertising and Labeling of Previously Used Lubricating Oil

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission (the ''Commission'') announces the repeal of the Trade Regulation Rule on Deceptive Advertising and Labeling of Previously Used Lubricating Oil (''the Used Oil Rule'' or ''the Rule''). After reviewing the rulemaking record, and in light of Commission promulgation of the Recycled Oil Rule in 1995, pursuant to the Energy Policy and Conservation Act (''EPCA''), the Commission has determined that the Used Oil Rule is no longer necessary or in the public interest, and that its repeal will eliminate unnecessary duplication, and any inconsistency with EPCA's goals. This document contains a Statement of Basis and Purpose for repealing the Used Oil Rule.

EFFECTIVE DATE: October 24, 1996.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to the FTC's Public Reference Branch, Room 130, Sixth Street and Pennsylvania Ave., N.W., Washington, DC 20580, (202) 326–2222; TTY for the hearing impaired (202) 326–2502.

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

SUPPLEMENTARY INFORMATION: .

Statement of Basis and Purpose

I. Background

Based on the Commission's finding that the new or used status of a lubricant was material to consumers, the Used Oil Rule, 16 CFR Part 406, was promulgated by the Commission on August 14, 1964 (29 FR 11650), 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,[1] until the Commission issued rules under 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 were 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]

[1] 42 U.S.C. 6363 note.

[2] *See* Pub. L. No. 96–463, U.S. Code Cong. & Adm. News, pp. 4354–4356 (1980).

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 (''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 proposed 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. 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.[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.'' 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.[11]

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 (61 FR 14686).[12] The ANPR comment period closed on May 3, 1996.

The Commission received one comment in response to the ANPR.[13] The comment was submitted by the Safety-Kleen Corporation, a re-refiner of used oil. Safety-Kleen supported 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.[14]

After reviewing the comment filed in response to the ANPR, on July 26, 1996, 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, the Commission published a Notice of Proposed Rulemaking (''NPR'') initiating a proceeding to consider whether the Used Oil Rule should be repealed or remain in effect (61 FR 39101).[15] In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, to use expedited procedures in this proceeding.[16] The NPR comment period closed on August 26, 1996.

In response to the NPR, the Commission received two comments and no requests to hold an informal hearing.[17] One comment was submitted by Evergreen Holding, Inc., a collector and re-refiner of used oil in the state of California. Evergreen supported repeal of the Used Oil Rule, stating that the Commission's Recycled Oil Rule adequately addresses the major issues of concern to the used oil and re-refining industries, and renders the Used Oil Rule duplicative unnecessary.[18] The other comment was submitted by Safety-Kleen. In its comment on the NPR, Safety-Kleen reiterated its support for repeal of the Used Oil Rule, stating that ''repealing the rule not only eliminates an antiquated rule replaced by a more modern one, but also responds to the President's National Regulatory Reinvention initiative by eliminating both an unnecessary and an obsolete rule.'' [19] Safety-Kleen further stated that the consumer is better protected and the industry better served

[3] 46 FR 20979.

[4] 42 U.S.C. 6363(a).

[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] 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.

[13] 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.

[14] Safety-Kleen, D–1, 1.

[15] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR 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, 30 days prior to its publication in the Federal Register.

[16] These procedures included: publishing a Notice of Proposed Rulemaking; soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties; receiving a final recommendation from Commission staff; and announcing final Commission action in the Federal Register.

[17] The comments submitted in response to the NPR also have been placed on the public record, Commission Rulemaking Record No. R511959, and are coded ''D'' indicating that they are public comments. The comments are cited by identifying the commenter (by abbreviation), the comment number, and the relevant page number.

[18] Evergreen, D–2, 2.

[19] Safety-Kleen, D–3, 1.

by the Commission's Recycled Oil Rule.[20]

II. Basis for Repeal of Rule

The Commission has decided to repeal the Used Oil Rule for the reasons discussed in the NPR. In sum, after reviewing the rulemaking record, and in light of promulgation of the Recycled Oil Rule, the Commission has determined that a separate Used Oil Rule is no longer necessary, and that its repeal will eliminate unnecessary duplication, and any inconsistency with EPCA's goals. While 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, the Commission has 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 enforcement actions under Section 13(b), 15 U.S.C. 53(b), in federal district court. Prosecuting serious or knowing misrepresentations in district court allows the Commission to seek injunctive relief as well as equitable remedies, such as redress or disgorgement. Any necessary administrative or district court actions also would serve to provide industry members with additional guidance about what practices are unfair or deceptive. In addition, the Commission has concluded that eliminating the Used Oil Rule not only reduces duplication, but also streamlines the regulatory scheme, thereby responding to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. Accordingly, the Commission hereby announces the repeal of the Used Oil Rule.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–12, requires an analysis of the anticipated impact of the repeal of the Used Oil Rule on small businesses. The reasons for repeal of the Rule have been explained in this notice. Repeal of the Used Oil Rule would appear to have little or no effect on small businesses. Moreover, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Used Oil Rule. Further, no comments suggested any adverse effect on small business from repeal. For these reasons, the Commission certifies, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. 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,[21] 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.[22] 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 will permanently eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 406

Advertising, Labeling, Trade practices, Used lubricating oil.

PART 406—[REMOVED]

The Commission, under authority of section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing part 406.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–27181 Filed 10–23–96; 8:45 am]

BILLING CODE 6750–01–M

[20] Id. at 2.

[21] U.S.C. 6363 note.

[22] 46 FR 20979.

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1315

New Restrictions on Lobbying

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its rules regarding restrictions on lobbying to make inflation adjustments in the range of civil monetary penalties it may assess against persons who violate these rules. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

EFFECTIVE DATE: October 24, 1996.

FOR FURTHER INFORMATION CONTACT: Charles L. Young, Senior Attorney, 423–632–7304.

SUPPLEMENTARY INFORMATION: Section 4 of the ''Federal Civil Penalties Inflation Adjustment Act of 1990'' (Pub. L. 101–410), as amended by the ''Debt Collection Improvement Act of 1996'' (Pub. L. 104–134), requires each Federal agency with statutory authority to assess a civil monetary penalty (CMP) to adjust each CMP by the inflation adjustment described in section 5 of the Act. Such adjustment is to be made by regulation published in the Federal Register. The first inflation adjustment is required by October 23, 1996—180 days after the enactment of the ''Debt Collection Improvement Act of 1996.'' Thereafter, agencies are to make inflation adjustments by regulation at least once every four years. Any increase in a CMP made pursuant to the Act applies only to violations that occur after the date the increase takes effect.

TVA's only statutory authority to assess a CMP is found at 31 U.S.C. 1352(c), which describes the range of penalties TVA may impose for a violation of that statute's prohibition against use of appropriated funds to pay any person for influencing or attempting to influence a Federal official in connection with any Federal action and for a failure to file a declaration or a declaration amendment as required by that statute. The penalties to be imposed for such violations and failures to file range from $10,000 to not more than $100,000. Application of the standard inflation adjustment formula in the Act would result in an increase in this CMP of approximately 22 percent; however, because the Act limits the initial inflation adjustment to a CMP to 10 percent of the penalty specified by statute, TVA is amending its rules at 18 CFR 1315.400 (a) and (b) to increase the minimum CMP it may assess under 31