

January 26, 2007

Ms. Sarah Ayers
Program Analyst
Office of Government Contracting
U.S. Small Business Administration
409 3rd Street, S.W., Suite 8800
Washington, DC 20416

Re: Notice of Intent to Waive the Nonmanufacturer Rule for Re-Refining Used Petroleum Lubricating Oils

Dear Ms. Ayers:

The Independent Lubricant Manufacturers Association (“ILMA”) submits the following comments on the U.S. Small Business Administration’s (“SBA”) “Notice of Intent to Waive the Nonmanufacturer Rule for Re-refining Used Petroleum Lubricating Oils” (“Notice”), 72 Fed. Reg. 604 (January 5, 2007). For the reasons set forth below, ILMA opposes the grant of the requested waiver by SBA.

Introduction of ILMA

ILMA, established in 1948, is a national trade association of 132 manufacturing member companies. As a group, ILMA member companies blend, compound and sell over 25 percent of the United States’ lubricant needs and over 75 percent of the metalworking fluids utilized in the country. The overwhelming majority of ILMA manufacturing member companies are “small businesses” under SBA’s size standard regulations.

Independent lubricant manufacturers by definition are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base stocks or that re-refine used oils back into lubricant base stocks. Base oils are purchased from refiners and re-refiners, who are also competitors in the sale of finished products. Independent lubricant manufacturers succeed by manufacturing and marketing high-quality, often specialized, lubricants. Their success in this competitive market also is directly attributable to their tradition of providing excellent, individualized service to their customers.

ILMA Members Supply Re-refined Lubricating Oils to the Federal Government

ILMA disagrees with the premise of the waiver request covered by the Notice that there are no “small business” manufacturers or processors available to participate in the Federal market. Moreover, ILMA members companies have provided lubricating oils covered by the Notice to the Government within the past 24 months.

Following the publication of SBA’s Notice, ILMA quickly canvassed a cross-section of its Manufacturing Members. One member responded that the company *currently* supplies re-refined engine oils to the Federal government at three military installations.¹ This same ILMA member company also indicated that it supplies several distributors with re-refined lubricating oils which it knows are then sold to local Federal facilities. These sales include supplying a “quick lube” facility under contract to the General Services Administration.

Two other ILMA members, in response to the Association’s survey, said that they have supplied re-refined lubricating oils covered by the Notice to the Federal market within the last 24 months.

A significant number of ILMA member companies indicated that they routinely provide re-refined lubricating oils to State and local governments under annual procurements, rather than to the Federal government.

Based on even the one ILMA member company identified above that currently supplies the Federal market, SBA should deny the pending Nonmanufacturer Rule waiver request.

Availability of Re-refined Base Stocks is Restricted

To the extent that ILMA members or other small businesses do not participate more actively in supplying re-refined lubricating oils covered by the Notice to the Federal market, such lack of participation is not the result of lack of interest. ILMA members instead have limited access to sufficient quantities of re-refined base stocks in order to supply consistently and at a fair price the Federal government.

There are only a handful of sources of re-refined base stocks that are required to make the lubricating oils covered by the Notice. Safety-Kleen is the largest U.S. re-refiner of used oils. The volumes of lubricant base stocks Safety-Kleen has made available to the ILMA member class-of-trade has diminished significantly over the past five years. According to our members, Safety-Kleen has kept the overwhelming majority

¹ The ILMA member company did not want to be identified by name or to disclose the names of the three military installations. To the extent SBA desires to verify the information, the ILMA member company can submit the information on a confidential basis.

of its output of lubricant base stocks for its own finished products, which compete directly with those manufactured by ILMA members. In addition, some members who purchase quantities of re-refined base stocks from Safety-Kleen are required to collect and return to Safety-Kleen the used oils made from those base stocks. In some instances, it is not possible to make such returns, so either Safety-Kleen will not sell the lubricant base stocks in the first instance or the ILMA member decides not to make the purchase.

The ILMA members who indicated that they have supplied the Federal market within the past 24 months said that they largely have sourced the re-refined base stocks from suppliers other than Safety-Kleen.²

ILMA believes that its members would participate more actively in sales of re-refined lubricating oils to the Federal market if there was a more competitive market for re-refined base stocks. However, as indicated above, independent lubricant manufacturers' access to such base stocks has been and continues to be restricted. ILMA is concerned that, if SBA were to grant the waiver, the effect of the waiver would be to further reduce independent lubricant manufacturers' access to re-refined base stocks and to essentially turn over the entire Federal market for re-refined lubricating oils to one company – that is, Safety-Kleen.

Conclusion

Based on the foregoing, ILMA urges SBA to deny the waiver request covered by the Notice. While small in number, a handful of ILMA member companies, which are "small businesses" have supplied re-refined lubricating oils to the Federal market within the past 24 months. In addition, these ILMA members know that re-refined lubricating oils are distributed to distributors that provide the products to Federal facilities on a local basis.

SBA should also deny the waiver because it will have the effect of precluding small businesses from supplying re-refined lubricating oils to the Federal market. One re-refiner essentially will become the sole supplier of re-refined lubricating oils to the Federal government, and such result is not what is intended by either the Federal Acquisition Regulations or SBA's contracting regulations.

² For example, one ILMA members company said it purchases volumes of re-refined base stocks from a Canadian re-refiner.

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ILMA appreciates this opportunity to submit these comments. The Association is prepared to provide any other information requested by SBA.

Sincerely,

Jeffrey L. Leiter

Jeffrey L. Leiter
Counsel to the Independent Lubricant
Manufacturers Association

cc: ILMA Board of Directors
Celeste M. Powers, CAE
Adam B. Cramer, Esq.