



## **ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 261 and 262**

**[EPA-HQ-RCRA-2012-0426; FRL-9906-44-OSWER]**

**RIN 2050-AG72**

### **Hazardous Waste Management and the Retail Sector: Providing and Seeking Information on Practices to Enhance Effectiveness to the Resource Conservation and Recovery Act Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability and request for comment.

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**SUMMARY:** This Notice of Data Availability (NODA) announces and invites comment on information assembled by the Environmental Protection Agency (EPA or the Agency), and solicits additional information regarding the hazardous waste management practices of establishments in the retail sector (e.g., stores). The NODA also invites comment on specific issues and suggested questions that the retail industry has raised about challenges they face in complying with the Resource Conservation and Recovery Act (RCRA) hazardous waste policies, guidances and regulations. This NODA meets the Agency's commitment to solicit public comment on issues associated with the retail sector under Executive Order 13563: Improving Regulation and Regulatory Review to make regulatory programs more effective or less burdensome in achieving regulatory objectives.

**DATES:** Comments must be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. **EPA-HQ-RCRA-2012-0426**, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the online instructions for submitting comments.
- *Email*: Comments may be sent by electronic mail (e-mail) to **rcra-docket@epa.gov**, Attention Docket ID No. **EPA-HQ-RCRA-2012-0426**. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.
- *Fax*: Comments may be faxed to 202-566-9744. Attention Docket ID No. **EPA-HQ-RCRA-2012-0426**.
- *Mail*: to **Hazardous Waste Management and the Retail Sector: Providing and Seeking Information on Practices to Enhance Effectiveness to the RCRA Program: Notice of Data Availability and Request for Comment**. Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. **EPA-HQ-RCRA-2012-0426**. Please include a total of 2 copies.
- *Hand Delivery*: Deliver two copies of your comments to the **Hazardous Waste Management and the Retail Sector: Providing and Seeking Information on Practices to Enhance Effectiveness to the RCRA Program: Notice of Data Availability and Request for Comment** Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Attention Docket ID No. **EPA-HQ-RCRA-2012-**

**0426.** Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. **EPA-HQ-RCRA-2012-0426**. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the **Hazardous Waste Management and the Retail Sector: Providing and Seeking Information on Practices to Enhance Effectiveness to the RCRA Program: Notice of Data Availability and Request for Comment** Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-0270. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding specific aspects of this notice, contact Richard Huggins Jr., Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, (5304P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460; telephone (703) 308-0017; fax number: 703-308-0514; e-mail address [huggins.richard@epa.gov](mailto:huggins.richard@epa.gov) or Jim O’Leary, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, (5304P) U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460; telephone (703) 308-8827; fax number: 703-308-0524; e-mail address [oleary.jim@epa.gov](mailto:oleary.jim@epa.gov). For more information on this rulemaking, please visit:

<http://yosemite.epa.gov/oepi/RuleGate.nsf/>.

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**SUPPLEMENTARY INFORMATION:**

## I. General Information

### A. Does This Action Apply to Me?

This Notice of Data Availability (NODA) provides information to the public and seeks comment and additional information associated with the retail sector and its facilities. Thus, entities that may want to review this NODA and may have relevant information to submit are likely to be classified in the following industrial sectors under the North American Industry Classification System (NAICS):

#### NAICS Codes of Entities Potentially Affected by this Notice

NAICS Code	Description of NAICS Code
441	Motor Vehicle and Parts Dealers
442	Furniture and Home Furnishings Stores
443	Electronics and Appliance Stores
444	Building Material and Garden Equipment and Supplies Dealers
445	Food and Beverage Stores
446	Health and Personal Care Stores
447	Gasoline Stations
448	Clothing and Clothing Accessories Stores
451	Sporting Goods, Hobby, Book, and Music Stores
452	General Merchandise Stores
453	Miscellaneous Store Retailers
454	Nonstore Retailers
722	Food Services and Drinking Places

The list of potentially affected entities in the above table is not exhaustive and is provided as a general indicator of those entities about which EPA is presenting information and requesting comment. In addition, other stakeholders affected by hazardous waste management by the retail sector, including Tribal, state, and local governments, community and environmental groups, and members of the public may also want to review this NODA and provide relevant information. If you have any questions regarding the applicability of this notice to a particular entity or industry,

consult the individuals listed above in the **FOR FURTHER INFORMATION CONTACT** Section.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify this NODA by docket number and other identifying information (subject heading, Federal Register date and page number).
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

## **II. Background**

### *A. Introduction*

Regulation of hazardous waste generated by the retail sector under the Resource Conservation and Recovery Act (RCRA) presents unique challenges that are not found in more “traditional” RCRA- regulated industries. The retail sector handles a large number of diverse products (for example, one retailer has reported about a million products and 4,000 facilities nationwide), many of which may potentially become regulated as hazardous waste under RCRA when discarded. Thus, retailers are required to make numerous hazardous waste determinations at thousands of sites, generally by store employees with limited experience with the RCRA hazardous waste regulations. Additionally, the retail sector often uses “reverse distribution” in their business processes, where non-damaged products from retail stores are routinely shipped back to consolidation centers. However, how reverse distribution processes are regulated, or should be regulated under RCRA has resulted in a number of questions.

In 2008, EPA began an effort to review the application of RCRA hazardous waste regulations to the retail sector, and over the next two years conducted meetings, conference calls and site visits with the retail sector to better understand their challenges. This included meetings with the Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA), Lowe’s, the National Retail Federation, Proctor and Gamble, the Retail Industry Leaders Association (RILA), Strong Environmental and Walmart, and site visits at Lowe’s, a Proctor and Gamble distribution center, and the Heritage Facility, a commercial waste facility that handles Proctor and Gamble’s wastes.

On January 18, 2011, President Obama signed Executive Order (EO) 13563, titled “Improving Regulation and Regulatory Review.” President Obama ordered federal departments and agencies to develop a “plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.” The EO also enumerated a number of principles and directives to improve the nation’s regulatory system. Today’s notice meets an Agency’s commitment under the EO to solicit public comment on issues associated with the retail sector (as reported in the EPA’s Final Plan for Periodic Retrospective Reviews, August 2011). EPA has used and will continue to use this EO to guide regulatory reviews and related Agency activities.

On March 14, 2011, EPA held a public meeting in Arlington, VA to receive input on its plan for retrospective review. At this meeting, Walmart presented several issues it encounters when complying with the RCRA hazardous waste management regulations in their stores. Walmart subsequently submitted written comments to the EO 13563 regulatory review docket. The Home Depot also submitted comments to the docket.<sup>1</sup>

Many of the comments related to the retail sector were specific to the unique issues faced when managing hazardous waste pharmaceuticals. However, other retail-related comments were also raised, with some of the more important comments focusing on episodic generation, hazardous waste determination, reverse distribution, and aerosol can management.

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<sup>1</sup> The Retail Industry Leaders Association also submitted comments in the Fall of 2011 that echoed Walmart and Home Depot’s concerns. The Docket can be found at Regulations.gov. Docket ID: EPA-HQ-OA-2011-0156.

Commenters also noted, hazardous waste generation rates at retail facilities can vary depending on product recalls, customer returns, expiration dates, accidental product spills or breakage, seasonality and ‘consumer’ midnight dumping in retail parking lots. Varying generation rates subject retailers to different generator regulations each calendar month. Varying generation rates present problems for retailers when complying with the training requirements, accumulation standards, recordkeeping, manifesting and other hazardous waste regulations. In addition, commenters noted making a hazardous waste determination is difficult for retailers because a single retail store can sell hundreds of thousands of products. These products come from tens of thousands of suppliers and manufacturers. In addition, EPA understands regulators and compliance inspectors also encounter difficulties with the retail sector for these same reasons.

Commenters also questioned how the common retail process of reverse distribution should be regulated under RCRA. Reverse distribution is generally a process whereby retailers send consumer products they are unable to sell in their stores back to a central processing location where they are audited and financial credit for the items may be granted by the manufacturer. The products are then evaluated and a decision is made regarding the final disposition of the item. Items can be donated, liquidated (sold), sent back to a manufacturer, recycled or discarded appropriately. Specifically commenters asked about when the decision is made to discard an item, whether the central processing location is considered the RCRA generator or whether the originating retail store should be considered the RCRA generator for that item.

Finally, aerosol cans make up a large percentage of the retail sector’s hazardous wastestream. Many aerosol cans could be recycled as scrap metal or have their flammable

propellants captured for fuel recovery. However, retailers manage aerosol cans as hazardous waste because the recycling activity is not performed at the retail facility. Also, it is unclear whether or when aerosol cans exhibit the reactivity characteristic (D003). Thus, the retail sector would like EPA to determine that aerosol cans without flammable propellants and non-hazardous contents are not reactive hazardous waste (D003). They would also like EPA to determine that the previously mentioned recycling exclusions do apply to retail facilities when aerosol cans are sent for recycling, and all other hazardous waste aerosol cans can be managed as Universal Wastes. EPA is interested in the views of our state and tribal partners regarding this issue.

Based on these comments and the issues raised at the public meeting, EPA identified improving the effectiveness of the hazardous waste policies, guidances or regulations for the retail sector as one of the 35 priority topics included in the “Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations.” In this plan, EPA committed to following up on three items: (1) to determine whether to issue guidance in the short term concerning regulation of certain pharmaceutical containers; (2) to review data about pharmaceutical products that may become wastes and to address issues as part of a rulemaking on pharmaceutical waste management; and (3) to analyze information and identify issues about the regulation’s applicability to hazardous wastes generated in the retail industry, what materials may be affected, what the scope of the issues are, and what options may exist for addressing the issues.

Since the release of EPA’s plan, EPA has made progress in meeting these commitments. Specifically:

- In November 2011, EPA issued a memorandum addressing pharmaceutical containers, a copy of which is included in the docket for this NODA.<sup>2</sup> This memorandum clarified the regulations governing the management of containers which held P-listed (acute) hazardous waste residues.
- Based on comments received on EPA’s proposed rule regarding the regulation of pharmaceutical wastes under the Universal Waste Rule (UWR) (see 73 FR 75220, December 2, 2008), the Agency is developing a proposed rule for healthcare facility-specific management standards for hazardous waste pharmaceuticals.
- EPA has conducted further outreach to stakeholders in the retail community to gather additional information regarding the hazardous waste issues they are facing. EPA has held several listening sessions with Advanced Auto Parts, Ball Corporation, the Consumer Specialty Products Association (CSPA), COSTHA, GRR Aerosols, Inc., The Home Depot, the National Association of Chain Drug Stores (NACDS), RILA, Safeway, and Walmart to better understand the issues the retail sector encounters in complying with the RCRA hazardous waste generator regulations.<sup>3</sup> EPA representatives also conducted site visits at an Advance Auto Parts retail store, a Lowe’s retail store, and a Walmart retail store, distribution center and return center.

These efforts have led to today’s NODA.

#### *B. Why We Are Publishing this NODA*

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<sup>2</sup> Memorandum from Suzanne Rudzinski, Director, Office of Resource Conservation and Recovery to RCRA Division Directors, U.S. EPA Regions 1-10, November 4, 2011.

<sup>3</sup> 40 CFR 260.10 defines “generator” as “any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.”

This NODA is part of the Agency's continuing effort to better understand concerns from all stakeholders about RCRA's applicability to the retail sector, what materials may be affected, what the full scope of the issues are, and what options may exist for addressing the issues.

EPA notes there have been a number of enforcement actions and settlements involving EPA, the states and the retail sector. The RCRA cases have typically involved the mismanagement and disposal of hazardous consumer products and pharmaceuticals that have become hazardous waste from retail stores. While the states have taken the majority of actions against several major retail companies, in 2013, EPA and the U.S. Department of Justice reached agreement with Walmart to resolve RCRA, CWA, and FIFRA violations that occurred across the country. As part of that agreement, Walmart committed to the continued development and implementation of a comprehensive, corporate-wide waste management program (which it started in 2006) to identify and properly manage all hazardous wastes generated throughout its retail operations. Specifically, Walmart now has suppliers submit product information to a third party to evaluate product formulations to determine a product's regulatory waste status and transportation classification, an electronic system that provides every employee with waste handling information for each product through the scanning of the UPC bar code, a waste management system that utilizes colored buckets to clearly designate where certain types of waste are accumulated prior to off-site shipment, and a reverse logistics system to track the disposition of all items going through their reverse distribution system. Other retail companies have started to implement similar programs to better manage their wastes.

In today's NODA, the EPA will be taking comment on several topics that were recurring themes in most of the retail enforcement actions. These recurring topics include where and when a hazardous waste determination must be made, episodic generation, reverse logistics and

hazardous waste management programs. This list may not fully cover the issues facing the retail sector, so the EPA has also asked for comments on areas we have not addressed or new topics that have recently arisen and were not seen in previous enforcement actions.

Furthermore, today's notice (1) presents available information that EPA has assembled on the universe of retail stores and retail facilities, as well as the universe of retail hazardous waste generators who have obtained EPA identification numbers and gives stakeholders the opportunity to provide comments they may have on this information and (2) offers stakeholders the opportunity to provide additional information they may have about the RCRA issues retail stores and retail facilities confront regarding the generation and management of hazardous waste. While EPA has already obtained insightful information from major retailers through meetings, public comments and site visits, EPA also recognizes that the retail sector is diverse, and would like to ensure that all parts of the industry have the opportunity to review the information that has been provided and share their own perspectives about the challenges they face.

EPA would also like to hear from the states and tribes on how they regulate and interact with the retail sector and any particular issues they have seen in implementing the regulations, determining compliance, etc. For example, during the course of EPA's review, states have contacted EPA about some issues they have experienced with the retail sector. In the summer of 2008, the state of Nevada contacted Region 9 asking for assistance with retail reverse logistics. In addition, some states in developing settlement agreements with retail companies have included the provision that retail companies work with EPA to promote the development of national policy regarding reverse logistics and other retail RCRA issues. Furthermore, it is important EPA hears from the states to understand how any new policies, guidance or regulations may impact the current state regulatory framework to ensure that we do not create

adverse impacts to a state's RCRA program. We are especially seeking any innovative ideas or programs that states have tried with this sector.

The NODA also gives community and environmental groups and the public an opportunity to comment on RCRA and the retail sector. These stakeholders may possess valuable information that could help EPA in evaluating next steps and developing policies, guidances and regulations that impact the retail sector.

The information requested in this NODA is intended to help the Agency better understand the issues that have been identified about the retail sector and provide a forum for stakeholders to present any additional issues. EPA will use this public input to make informed decisions about possible next steps to improve the RCRA hazardous waste policies, guidances or regulations for retail operations.

### *C. RCRA Hazardous Waste Generator Management Regulations*

One of the core questions retail commenters raised was at what point in their process is a hazardous waste generated. Thus in order to provide adequate context, in this section, EPA provides a very brief explanation of the hazardous waste generation regulations. Under RCRA, waste generators are the first link in the cradle-to-grave hazardous waste management system. All generators must determine if their waste is hazardous at the point of generation and must oversee the ultimate fate of the waste. In particular, the RCRA federal hazardous waste regulations require generators to ensure and document that the hazardous waste they generate is properly identified, managed, and treated prior to recycling, treatment, storage or disposal. The regulations applicable to generators of hazardous waste are located in 40 CFR part 261 and part 262. The degree of regulation to which each generator is subject depends to a large extent on

how much hazardous waste each generator generates every calendar month. Generator status can range from conditionally exempt small quantity generators (CESQGs), which are the least regulated generators, to large quantity generators (LQGs), which are the most regulated generators.

### III. Methodology and Data on Which EPA Seeks Comment

#### A. Data Methodology

EPA has developed a methodology to estimate the number of retail stores that generate hazardous waste to better understand the universe of facilities that may be affected by RCRA compliance issues. Using data from EPA’s RCRAInfo database<sup>4</sup> and the US Census, we examined a number of North American Industry Classification System (NAICS) codes that apply to the retail industry (see below) and made the assumption that these NAICS codes represent the majority of retailers that generate hazardous waste. We ask commenters whether this assumption is correct and to submit information if they believe additional sectors of the retail industry that generate hazardous waste are not represented by these NAICS codes.

**Table 1: NAICS Codes Representing Majority of Retail HW Generators**

NAICS Code	Description of NAICS Code
441	Motor Vehicle and Parts Dealers
442	Furniture and Home Furnishings Stores
443	Electronics and Appliance Stores
444	Building Material and Garden Equipment and Supplies Dealers
445	Food and Beverage Stores
446	Health and Personal Care Stores
447	Gasoline Stations
448	Clothing and Clothing Accessories Stores
451	Sporting Goods, Hobby, Book, and Music Stores

<sup>4</sup> The RCRAInfo database tracks RCRA Subtitle C facility-specific data (i.e., events and activities related to hazardous waste generators, transporters, and treatment storage and disposal facilities), and hazardous waste activity reports, known as biennial reports, that are submitted by large quantity generators and treatment, storage and disposal facilities.

452	General Merchandise Stores
453	Miscellaneous Store Retailers
454	Nonstore Retailers
722	Food Services and Drinking Places

Using 2007 US Census data, we calculated the total number of facilities that operate under each of these retail NAICS codes. We then used EPA’s RCRAInfo database to identify facilities that had notified or otherwise reported as hazardous waste generators in these NAICS codes. Facilities that generate greater than 100 kilograms of hazardous waste per month—small quantity generators (SQGs) or 1,000 kilograms of hazardous waste per month or 1 kg of acute hazardous waste per month-- large quantity generators (LQGs) are required to notify EPA or their authorized state in order to obtain a unique RCRA identification number. Some states also require conditionally exempt small quantity generators (CESQGs) to notify and receive a RCRA identification number.<sup>5</sup>

From the RCRAInfo database, we estimated the number of LQGs, SQGs, and CESQGs that had notified or reported under one of the primary NAICS code listed above. Then for each NAICS code, we calculated the percent of the total facilities that had notified or reported as a hazardous waste generator represented by each generator category (LQG, SQG, CESQG). For example, for NAICS code 441, Motor Vehicle and Parts Dealers, the RCRAInfo database indicates the total number of hazardous waste generators is 7,846 of which 0.9% are LQGs, 31.8% are SQGs, and 67.3% are CESQGs, respectively. We then totaled the data for all the NAICS codes to get total estimates for the retail universe. See Table 2.

The number of retail facilities identified in the RCRAInfo database is a subset of the total universe of hazardous waste generating facilities in the retail sector since not all retailers will

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<sup>5</sup> Some CESQGs will also notify and receive a RCRA identification number because they are episodic SQGs or LQGs, or they manifest their hazardous wastes off-site (a hazardous waste manifest requires the use of a RCRA identification number).

generate an amount of hazardous waste each month sufficient to require RCRA notification. Furthermore, we believe the estimate of retail sector hazardous waste generators from the RCRAInfo database to be extremely low because it is likely that many retail stores and facilities are CESQGs who, in most states, do not have to notify EPA or the authorized state to obtain a RCRA identification number and thus are not in the system. In addition, we believe some portion of the retail universe may not be aware they have generated hazardous waste and therefore, have not notified. For all these reasons, we believe the number of retailers in the RCRAInfo database underestimates the retail sector hazardous waste generator universe. We also believe that the calculated portions of the total retail hazardous waste generator universe that are SQGs and CESQGs are also likely underestimated. This is because the RCRAInfo database for these categories is limited by the level of detail in EPA's Biennial Report (BR) since the BR is mandatory only for LQGs.

Following the results of the above analysis, we then used the 2009 BR to identify the different types and quantities of hazardous waste generated by LQGs for each retail NAICS code. We then created a spread sheet that totaled the quantity of hazardous waste generated by each hazardous waste code across all retail NAICS codes, as well as the total amount of hazardous waste generated for each NAICS code.

We request comment on the methodology described above. We also request that commenters submit any additional procedures, information, or data that may be used to better characterize the universe of retail facilities and their hazardous waste generator categories.

*B. Data Available on the Universe of Retail Stores and Retail Facilities and the Amount of Hazardous Waste Generated by These Facilities*

Table 2 provides an estimate for the retail sector universe of hazardous waste generator facilities and estimates the percentages in each generator category (LQG, SQG, and CESQG).

Specifically, Table 2 indicates the total universe of retail sector facilities (41,138) that have notified EPA or an authorized state they generate hazardous waste. Of this total, about 95 percent are identified as SQGs and CESQGs. Table 3 displays the total tons of hazardous waste generated by LQGs in the retail sector in 2009 by NAICS code. As discussed above, EPA recognizes these estimates have a number of limitations and therefore involve a great deal of uncertainty. EPA asks commenters to provide any relevant information that could be used to improve our estimates of the number of retailers, the number of retailers that generate hazardous waste, and the distribution of LQGs, SQGs, and CESQGs within this universe, as well as the total quantity of hazardous waste generated by the retail sector.

**Table 2 Comparison of Retail Census Data and Number of Retail Facilities in RCRAInfo Database by Generator Status**

NAICS Code	NAICS Code Description	Total # of Facilities according to US Census 2007 <sup>6</sup>	Total # of Firms according to US Census 2007 <sup>7</sup>	Total # of Facilities in RCRAInfo with a generator status	# of LQGs	LQG % of Facilities in RCRAInfo with a generator status	# of SQGs	SQG % of Facilities in RCRAInfo with a generator status	# of CESQGs	CESQG % of Facilities in RCRAInfo with a generator status
441	Motor Vehicle and Parts Dealers	125,895	94,291	7,846	73	0.9%	2,492	31.8%	5,281	67.3%
442	Furniture and Home Furnishings Stores	65,319	46,532	388	3	0.8%	31	8.0%	354	91.2%
443	Electronics and Appliance Stores	50,041	30,657	135	4	3.0%	48	35.6%	83	61.5%
444	Building Material and Garden Equipment and Supplies Dealers	90,443	62,011	4,066	69	1.7%	2,282	56.1%	1,715	42.2%
445	Food and Beverage Stores	146,951	116,280	1,901	141	7.4%	223	11.7%	1,537	80.9%
446	Health and Personal Care Stores	87,311	43,864	8,074	225	2.8%	3,805	47.1%	4,044	50.1%
447	Gasoline	117,014	66,431	8,941	411	4.6%	2,828	31.6%	5,702	63.8%

<sup>6</sup> 2007 Economic Census EC0700CADV1: All sectors: Core Business Statistics Series: Advance Summary Statistics for the United States (2007 NAICS Basis): 2007

<sup>7</sup> Statistics of U.S. Business: 2007 U.S.- Retail Trade NAICS 44. [www.census.gov/epcd/susb/2007/us/US44.HTM](http://www.census.gov/epcd/susb/2007/us/US44.HTM)

NAICS Code	NAICS Code Description	Total # of Facilities according to US Census 2007 <sup>6</sup>	Total # of Firms according to US Census 2007 <sup>7</sup>	Total # of Facilities in RCRAInfo with a generator status	# of LQGs	LQG % of Facilities in RCRAInfo with a generator status	# of SQGs	SQG % of Facilities in RCRAInfo with a generator status	# of CESQGs	CESQG % of Facilities in RCRAInfo with a generator status
	Stations									
448	Clothing and Clothing Accessories Stores	154,935	67,035	135	3	2.2%	28	20.7%	104	77.0%
451	Sporting Goods, Hobby, Book, and Music Stores	57,197	41,057	146	1	0.7%	45	30.8%	100	68.5%
452	General Merchandise Stores	46,065	10,460	8,544	914	10.7%	4770	55.8%	2,860	33.5%
453	Miscellaneous Store Retailers	120,260	97,730	417	26	6.2%	105	25.2%	286	68.6%
454	Nonstore Retailers	61,272	40,168	310	17	5.5%	96	31.0%	197	63.5%
722	Food Services and Drinking Places	563,784	423,999	235	6	2.6%	21	8.9%	208	88.5%
<b>Totals</b>		<b>1,686,487</b>	<b>1,140,515</b>	<b>41,138</b>	<b>1,893</b>	<b>4.6%</b>	<b>16,774</b>	<b>40.8%</b>	<b>22,471</b>	<b>54.6%</b>

Table 3: Tons of Hazardous Waste Generated by LQGs in 2009 by NAICS Code

NAICS Code	Description of NAICS Code	Amount of Waste Generated in Tons <sup>8</sup>
441	Motor Vehicle and Parts Dealers	83
442	Furniture and Home Furnishings Stores	0
443	Electronics and Appliance Stores	0
444	Building Material and Garden Equipment and Supplies Dealers	530
445	Food and Beverage Stores	41
446	Health and Personal Care Stores	268
447	Gasoline Stations	1,187
448	Clothing and Clothing Accessories Stores	10
451	Sporting Goods, Hobby, Book, and Music Stores	4
452	General Merchandise Stores	608
453	Miscellaneous Store Retailers	90
454	Nonstore Retailers	29,601
722	Food Services and Drinking Places	0
Total		32,422

#### IV. Additional Information that EPA Seeks from Commenters

<sup>8</sup> Waste totals obtained from the 2009 Biennial Report.

EPA is continuing its effort to seek additional information about retail stores and facilities and their operations in order to better understand what RCRA compliance challenges they face. This information will assist EPA in determining associated issues and identifying options that may exist to address these issues. The information EPA seeks falls into nine categories: (A) suggestions for improving the RCRA hazardous waste policies, guidances and regulations for retail operations (B) information about the retail universe and the hazardous waste generated; (C) information about episodic generation; (D) information about retail stores' programs for handling hazardous waste; (E) information about hazardous waste training for employees; (F) information about aerosol cans; (G) information about transportation and reverse logistics; (H) information about reverse logistic centers; and (I) information about sustainability efforts undertaken by retail facilities.

Following each section, we have included a list of suggested questions as a helpful guide for your consideration in preparing your comments. EPA provides these questions simply to guide the type of comments we would find useful for this inquiry. We encourage commenters to submit any information that they believe would assist EPA in making the RCRA program more effective in the retail sector. EPA will consider all comments we receive related to the nine categories of information described above regardless of whether they address all, some or none of these specific questions. If you choose to provide facility-specific data, it would be useful to provide the name and location (city and state) and the hazardous waste generator category of the facility (LQG, SQG, CESQG, or other category as designated by state regulations) where possible.

*A. Suggestions for Improving the RCRA Hazardous Waste Management Policies, Guidances and Regulations for Retail Operations*

The suggested questions below provide a chance for *all* commenters to provide input on where they see possibilities to improve the RCRA hazardous waste policies, guidances or regulations. Commenters, however, should feel free to provide whatever pertinent information that would be useful to EPA as we review the hazardous waste program policies, guidances and regulations.

**Suggested Questions to Consider for Comment Submission:**

- (1) What regulatory changes do you recommend that would help ensure hazardous waste generated by the retail sector is managed in a way that protects human health and the environment, while providing a regulatory framework that works with how retail facilities currently operate?
- (2) Do any states or tribes have RCRA policies, guidances or regulations for retail operations? If so, could you describe them or submit copies of them, as well as any evaluation of or information on their effectiveness?
- (3) Do states find common issues at retail facilities? If so, were you able to alleviate these issues or are there roadblocks preventing you from fixing the problems?
- (4) Do you have any information which suggests there was or may have been any disproportional impacts on communities due to the retail sector's handling of hazardous waste?
- (5) Do certain hazardous wastes generated by retailers pose less risk to human health and the environment than others? Which ones and why are the hazards less (e.g., explain how these hazardous wastes handled in a specific way reduce the possibility of release to the environment, or how the character or composition ensure that exposure cannot occur)?
- (6) Are there ways, either through guidance or regulatory changes that EPA could encourage safe recycling, or reuse of hazardous wastes generated by the retail sector?

## *B. Information About the Retail Universe and the Hazardous Waste Generated*

To better understand the scope of the issues, we request commenters provide additional data to aid in defining the universe of retail facilities that generate hazardous wastes. If possible, data should be categorized by NAICS codes, which describe the primary business activity performed by a facility. Please provide information regarding the number of retail facilities generating hazardous waste. In addition, EPA would like to better understand the operations of retail facilities, and the types and quantities of hazardous waste generated. Specifically, we are seeking information about the types of operations and activities that generate hazardous waste and the associated types and quantities. For example, it will be very useful to know generally how much of a retail store's waste qualifies as hazardous waste. Also, understanding situations, such as upset conditions like product recalls or customer returns will be helpful to EPA to better understand the activities that generate hazardous waste in the retail sector and the challenges in adhering to the existing RCRA hazardous waste regulations.

### **Suggested Questions to Consider for Comment Submission:**

- (1) How many retail stores or retail facilities do you operate or regulate or oversee?
- (2) Can you estimate the distribution of your retail stores by RCRA regulatory status; e.g., CESQG, SQG, LQG?
- (3) How many different types of products carried or handled by your retail store do you estimate to be hazardous waste under RCRA (40 CFR 261.3) when discarded? Describe the types of products and volumes generated monthly.
- (4) For the activities and operations that generate hazardous waste in the retail setting (e.g., spills, product maintenance or other services, customer returns, product recalls, seasonal changes of product, manufacturer-directed changes of product, or facility operations and maintenance),

identify the major RCRA hazardous waste streams generated, the types of hazards presented, RCRA waste codes for these hazardous wastes (if readily available), and the quantities generated.

(5) Do your retail stores have written procedures for handling hazardous waste spills? On average, how many spills of hazardous waste occur monthly?

(6) Do retail stores generate any wastes that qualify as universal wastes in 40 CFR 273?<sup>9</sup> If so, is that waste handled under the full hazardous waste regulations or under the universal waste regulations? Describe the types of products and volumes generated monthly. Are there ways EPA could help the retail sector utilize the U.W. program?

(7) How do your retail stores generate and handle recalls that may potentially become hazardous waste?

(8) For manufacturer-directed changes of product, how are the unused products managed? Who determines how these unused products are managed?

(9) How do you handle customer returns that may become hazardous waste?

(10) If you have pharmaceuticals, what percentage of your monthly hazardous waste and/or monthly acute hazardous waste quantities are pharmaceuticals?

(11) If you have pesticides, what percentage of your monthly hazardous waste and/or monthly acute hazardous waste quantities are pesticides?

### *C. Information About Episodic Generation*

EPA regulations require hazardous waste generators to count the amount of hazardous waste generated each calendar month to determine their regulatory status and to manage that waste based on the regulations associated with that monthly generator status. EPA understands

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<sup>9</sup> The following wastes are Universal Waste under the federal RCRA program: batteries, pesticides, mercury-containing equipment, and lamps.

that retail facilities' regulatory status can periodically change as a result of certain unusual episodic events, such as a recall or seasonal merchandise changes. EPA would like to better understand the ramifications of the hazardous waste regulations in the context of episodic generation for both the retail sector and the State regulators by posing the following suggested questions.

**Suggested Questions to Consider for Comment Submission:**

(1) In the course of a calendar year, how often, on average, does a retail store's quantity of hazardous waste change, resulting in a change to the retail stores regulatory status from a CESQG to a SQG or an LQG or an SQG to an LQG?

(2) When the regulatory status of a store changes, what are the reasons most often precipitating this change? More specifically, to what extent are changes due to recalls, spills, expired products, returns by customers, or other reasons? Does any one reason stand out?

(3) How do you currently address changes in a store's regulatory status? For example, do you factor in the possibility of a more stringent regulatory status and comply with the more stringent regulations throughout the year? Do you comply based on the regulatory status for the month(s) in question? Do you work with your state to address situations when episodic generation occurs? If so, how? Do you rely on a service provider to ensure compliance with hazardous waste laws, including generator status?

(4) Do you have any suggestions as to how EPA could modify its rules to account for periodic changes in generator status? Please address scope (planned or unplanned), frequency of episodic events that should be allowed over a calendar year without impacting a generator's regulatory status, on-site and off-site provisions, such as notification, time to remove materials from the facility and ship them for recycling or to a RCRA permitted treatment, storage and disposal facility (TSDF), etc.

(5) Does your state have a specific policy for dealing with episodic generation? Have you seen any impacts (e.g., spills or other releases) from such episodes?

*D. Information About Retail Stores' Hazardous Waste Programs*

The retail sector is extremely diverse in terms of products sold and store size; therefore corporations may have developed specific methods to manage their hazardous waste generation. We request commenters provide data that helps characterize how hazardous wastes are currently being managed at retail establishments. More specifically, EPA would like to better understand the process or standard operating procedures facility personnel use to determine whether their retail products or other wastes are hazardous waste and how hazardous wastes are handled before being shipped off-site, or managed on-site by posing the following suggested questions.

**Suggested Questions to Consider for Comment Submission:**

- (1) What amount of hazardous waste do you generate in your store(s)? Monthly? Yearly? Please provide this data in pounds, if possible.
- (2) Describe what procedures you have in place to classify which products or other wastes would be hazardous wastes upon discard. For example, to the extent applicable, please include information on color coding products, computer based systems, third party services, or information from suppliers or manufacturers that assist you in making a hazardous waste determination.
- (3) How and where do you accumulate your hazardous waste at your facility? Do you have written procedures in place for hazardous waste management?
- (4) How frequently do you send your hazardous wastes off-site, if applicable, for management or disposal? Where do you send your hazardous waste (e.g., a RCRA hazardous waste facility, a municipal solid waste facility, or a hazardous waste recycler)?

(5) Does your facility have any specific requirements for management of hazardous wastes on-site (e.g., secondary containment)?

#### *E. Information About Hazardous Waste Employee Training*

Employee training conditions for hazardous waste generators vary depending on whether the facility is a CESQG, an SQG, or an LQG. CESQGs are not required to provide personnel training, while SQGs have basic provisions and LQGs have more prescriptive provisions. Retail operations may have difficulty training their staff due to the relatively high levels of turnover and part time and seasonal employees. EPA notes that only those employees handling hazardous waste must be trained. Therefore, EPA seeks answers to the following suggested questions.

#### **Suggested Questions to Consider for Comment Submission:**

- (1) What is the average number of employees per retail store or facility?
- (2) How many temporary/seasonal employees on average do individual retail stores hire each year?
- (3) Do all employees receive RCRA hazardous waste training, or just permanent employees or employees who handle products or other wastes that could be hazardous wastes upon discard?
- (4) What types of hazardous waste management training do your employees receive, if any?
- (5) How many hours of employee training on hazardous waste issues are required in your retail stores?
- (6) What is the average cost per employee of providing hazardous waste training to your work force annually?
- (7) Are any employees trained to handle hazardous waste releases or does the retail store utilize a third party service for cleanup efforts?

#### *F. Information About Aerosol Cans*

EPA understands the retail sector generates large quantities of aerosol cans that are discarded. It has been suggested by some members of the retail sector that waste aerosol cans can be grouped into four categories: 1) aerosol cans that contain non-hazardous propellant and the remaining can contents are non-hazardous (either by listing or characteristic); 2) aerosol cans that contain propellants that are traditional ignitable fuel sources such as propane or butane, but the remaining contents are non-hazardous (either by listing or characteristic); 3) aerosol cans that contain propellants that are traditional ignitable fuel sources such as propane or butane, and the remaining contents are also hazardous (either by listing or characteristic); and 4) aerosol cans that contain ignitable hazardous propellants that are not traditional fuel sources, and the remaining contents may or may not be hazardous (either by listing or characteristic). EPA would like to gain a better understanding of the aerosol can wastestream to determine if any action should be taken to aid in the management of aerosol cans that are discarded. Therefore, EPA seeks answers to the following suggested questions.

**Suggested Questions to Consider for Comment Submission:**

(1) How many waste aerosol cans does a retail store generate monthly on average? How many does your entire company average monthly?

(2) In which categories (from above) do your waste aerosol cans belong or do they fall under another category? How many waste aerosol cans do you generate in each category?

(3) How do you manage your aerosol cans? Are they recycled? Are they disposed?

If your store is in California or Colorado, do you handle your waste aerosol cans as Universal Waste?

(4) What percentage do the waste aerosol cans constitute in your total hazardous wastestream?

(5) What packaging and shipping methods are used to transport aerosol cans from retail stores?

(6) Have you ever experienced problems shipping aerosol cans? How often do you receive aerosol cans that have been damaged in transportation? (e.g., Did the aerosol can burst from heat? Did a pallet fall over damaging the aerosol can?)

(7) Has your State developed any specific approach, whether through guidance or regulation for aerosol cans?

#### *G. Information About Transportation and Reverse Logistics*

In previous meetings with the retail sector, participants asked if EPA could harmonize EPA's hazardous waste regulations with DOT's hazardous material regulations. To evaluate if there maybe viable options for harmonization, we would like to obtain additional information about retail shipping practices (in particular reverse logistics) and how the point of generation of hazardous waste (i.e., when and where the hazardous waste is first generated) affects shipping. Therefore, EPA seeks answers to the following suggested questions.

#### **Suggested Questions to Consider for Comment Submission:**

(1) What safeguards do you use to ship retail items through reverse logistics to ensure minimal damage?

(2) Are the shipping and packaging procedures you use for sending retail items through reverse logistics the same as the packaging and shipping procedures for products coming into the retail store? If not, how do they differ?

(3) Of the items sent through reverse logistics, how many are sent in DOT Classes 1-8, and approximately how many or what percentage are in each Class?

(4) What methods do you use to track the shipments and what information about the shipments is tracked (e.g., amount of shampoo, brand of shampoo, sku-numbers, etc.)?

(5) Does your state have specific tracking and reporting regulations for reverse logistics?

## *H. Information About Reverse Logistic Centers*

Industry representatives have told us that reverse logistic centers (RLCs) are critical in maintaining an efficient reverse logistics system for the retail industry. RLCs can consolidate large quantities of goods from all the stores in a region, which then allows companies to resell, recycle, donate or dispose of these items more efficiently due to economies of scale. Industry representatives have suggested that sending all of their non-damaged/non-leaking products to an RLC could increase recycling, donation and reselling due to larger quantities at one location. To learn more, EPA seeks answers to the following suggested questions.

### **Suggested Questions to Consider for Comment Submission:**

- (1) How many reverse logistic centers do your company own and operate? If you do not own your own RLC, do you use a third party RLC and how do they operate these centers? Does that third party RLC manage multiple companies' retail products at the same RLC? Specific issues on which EPA is soliciting comment are: point of generation, tracking multiple companies waste at one center, and waste management.
- (2) How many retail stores are serviced by the RLC and what is the average distance from a retail store to the RLC?
- (3) What is the regulatory status of the RLC? How many are CESQGs vs. SQGs vs. LQGs?
- (4) Do you receive credit for your returned retail products? Who gives you the credit and what is the process for receiving credit (e.g., receive credit as a manufacturer discount when purchasing the product)? What is the annual value of credit that you receive?
- (5) What process and procedures does the RLC use to determine if material will be sold, donated, recycled, or disposed? On average what types of products and volumes are recycled, disposed, and donated annually?

(6) To whom do you donate? Are there certain procedures you take before donating? Are there certain products you will not donate? Do the existing RCRA hazardous waste rules present barriers to donating products? If so, what are they? Has your state adopted policies or regulations to make it easier for your retail facility to donate products?

(7) Do your supplier contracts specify that items not sellable in the store must be disposed? If so, is it all contracts or can you estimate, what percentage contain this stipulation?

*I. Information About Sustainability Efforts Undertaken by Retail Facilities*

EPA's programs intend to promote and facilitate sustainability through sustainable materials management initiatives that seek to minimize impacts across the entire material lifecycle, from raw material extraction to waste management strategies, such as recycling and reuse, as well as through labeling green products and promoting green chemistry and engineering practices. (<http://www.epa.gov/sustainability/>) Retail industry representatives have suggested some concerns about re-using materials containing hazardous wastes and that the hazardous waste regulations may impede certain sustainability efforts. To better understand these issues, EPA seeks answers to the following suggested questions.

**Suggested Questions to Consider for Comment Submission:**

(1) What material reuse issues have you encountered?

(2) What changes to the hazardous waste generator policies, guidances or regulations might allow you to increase your company's sustainability efforts?

(3) Do your retail stores collect batteries or mercury lamps for recycling? Do your retail stores collect any other hazardous wastes from customers?

(4) Do your retail stores operate collection or buyback programs for electronics? If so, what mechanism is used for the collection or buyback program? Are there regulatory barriers to your retail facility collecting or participating in electronic take-back programs?

(5) To what extent do you work with your suppliers to identify products that are classified as hazardous waste upon discard? Please provide examples.

(6) To what extent do you work with your suppliers to identify products that are classified as hazardous waste or initiate changes to feedstocks or manufacturing processes resulting in products that are not a hazardous waste upon discard or are reduced in volume or toxicity? Please provide examples.

Dated: February 4, 2014.

Mathy Stanislaus, Assistant Administrator,  
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