

**Oral Testimony on EPA's Request for Comment
on "Evaluation of Existing Regulations"**

Docket Number EPA-HQ-OA-2017-0190

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RILA is the trade association of the world's largest and most innovative retail companies. The retail industry employs over 42 million Americans in our stores, and through our product manufacturers and service suppliers.

RILA welcomes this opportunity to testify and looks forward to continuing to work with EPA on ways to protect our customers and the environment, while streamlining the burdensome regulatory compliance process for our businesses – two goals that are not mutually exclusive.

I will briefly highlight three issues under the Resource Conservation and Recovery Act that are foremost on the minds of retailers and that are well-suited for EPA's reevaluation, as directed by Executive Order 13777. These are: 1) the classification of low-concentration nicotine products as hazardous wastes; 2) the potential classification of aerosol products as fully regulated hazardous wastes; and 3) the application of the recently promulgated hazardous waste generator rule to the retail sector. Our written testimony, to be filed, will contain more detailed information on these issues.

Retailers sell millions of consumer products in our stores every day that are generally deemed safe for consumption or use by ordinary consumers, and meet all applicable safety regulations. Examples include nicotine gum, cooking oil spray, vanilla extract, and baby shampoo. If a customer discards these products at home, he or she throws it out in the normal municipal waste disposal or recycling stream. However, when the same consumer product goes unsold by a store or is returned to a store by a customer, it may be classified as a "hazardous waste," potentially subjecting the store to the same burdensome hazardous waste generator regulations as a steel mill or chemical plant.

Low-Concentration Nicotine Products

First, current EPA regulations classify low-concentration nicotine products -- such as nicotine patches, gums, lozenges, prescription liquids, and e-cigarettes – as "acutely hazardous waste." This classification stems from an outdated regulation from 1980 – a time when the only nicotine products on the market were powerful pesticides containing up to 40 percent nicotine.

Nicotine replacement therapy products, in particular, are clearly not acutely hazardous. Medical professionals recommend that their patients – our customers – apply these products to their skin or chew them to help their patients quit smoking tobacco. There is no reason why the EPA should continue to

classify these products as acutely hazardous wastes when they are disposed. RILA strongly urges EPA to reclassify low-concentration nicotine products as “non-acutely hazardous waste,” which will save the retail industry over \$40 million in annual compliance costs.

Aerosol Products

Under current EPA regulations and guidance, the classification of aerosol cans as wastes or non-wastes, and as hazardous or non-hazardous, varies significantly based on a variety of subtle and confusing factors. Because of the regulatory complexity and uncertainty, retailers often have little choice but to handle all their unsold, returned, or used aerosols as fully regulated hazardous wastes, despite the fact that the products pose little or no risk to human health and the environment. As a result aerosol cans now account for up to 50 percent or more of the materials from the retail sector that are deemed to be hazardous wastes. This imposes tremendous costs on the industry and makes recycling difficult or impractical. In order to address these issues, a number of states have streamlined the requirements for aerosol wastes by classifying them as universal wastes. RILA strongly urges EPA to partner with the retail industry to develop clear and simple guidance on the status of aerosol cans, clarify they are not hazardous if recycled by the retailer, and to issue a federal rule classifying waste aerosol cans as universal wastes.

Hazardous Waste Generator Final Rule

Finally, for several years, the retail industry urged EPA to work with us to address problems with RCRA being applied to the retail sector. While last September, EPA published a strategy for addressing the unique challenges the retail sector faces under RCRA, it subsequently issued the hazardous waste generator rule, which was actually a big step in the wrong direction. As applied to the retail industry, the compliance costs under the final rule will vastly outweigh any environmental benefit. The final rule will take effect in Alaska, Iowa and Puerto Rico on May 30 – just three weeks from today – and will start to be implemented by other states soon after that. RILA strongly urges the EPA to delay the effective date of the rule, at least as it applies to the retail sector, so that the Agency can conduct a thorough review of these issues.

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In conclusion, I want to reiterate RILA’s commitment to continuing to work with the EPA to develop common sense regulations that protect our customers and the environment while not overburdening businesses with red tape and compliance costs. Thank you again for this opportunity to testify.