

May 15, 2017

U.S. Environmental Protection Agency  
EPA Docket Center  
EPA-HQ-OA-2017-0190

**Re: EPA Docket No. EPA-HQ-OA-2017-0190  
Executive Order 13777, Enforcing the Regulatory Reform Agenda, Request for  
Comment  
82 Fed. Reg. 17,793 (April 13, 2017)**

Walmart is pleased to provide the attached comments to the U.S. Environmental Protection Agency (EPA) on Executive Order 13777, Enforcing the Regulatory Reform Agenda, Request for Comment which was published in the Federal Register on April 13, 2017. See 82 Fed. Reg. 17,793.

Should EPA have questions about the comments or any technical difficulties, please contact either of the undersigned below. Walmart truly appreciates EPA granting it the opportunity to submit these comments. By working together in an open and cooperative manner, Walmart believes it is possible to design and implement regulations that are protective of human health and the environment and make sound business sense.

Sincerely,

  
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Enclosure

## Walmart Comments to Executive Order Request

### Enforcing the Regulatory Reform Agenda

Docket ID No.: EPA-HQ-OA-2017-0190

82 Fed. Reg. 17,793 (April 13, 2017)

Walmart Stores, Inc. (“Walmart”) thanks the U.S. Environmental Protection Agency (“EPA”) for the opportunity to provide comments on Executive Order 13777 (herein, the “Executive Order” or “EO”) entitled “Enforcing the Regulatory Reform Agenda.” While there are many potential topics of concern Walmart could discuss, in order to direct EPA’s attention to our most pressing issues, Walmart has chosen to focus our comments on two aspects of how EPA regulations significantly negatively impact our business<sup>1</sup>. Walmart would be glad to assist EPA by providing further information regarding these two areas, or to discuss any other areas of environmental regulation if requested by EPA.

In addition to filing these comments, Walmart also fully supports the comments to this Executive Order submitted by both the Retail Industry Leaders Association (RILA) and the National Association of Chain Drug Stores (NACDS).

### Executive Summary

#### *Hazardous Waste*

Perhaps more than any other retail business, Walmart has been required to wrestle with the Resource Conservation and Recovery Act’s (RCRA’s) regulation of common consumer products. The significant burden placed on the retail sector by RCRA far outweighs the environmental benefits, and ultimately, results in increased prices for American consumers. To that end and as explained in more detail below, Walmart suggests the following revisions to RCRA:

- Amend 40 CFR 261.4(b)(1) to include Consumer Products as Household Waste regardless of the location of their generation
- Expand Universal Waste Rules to Cover Consumer Products
- Protect the Legitimate Business Process of Reverse Distribution
- Issue a Clarification around Recycling of Aerosol Cans
- Exempt Low Concentration Nicotine Products from RCRA Regulation
- Repeal the Final Rule on Hazardous Waste Generator Improvements

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<sup>1</sup> As an example of other issues, Walmart is also concerned about the Local Emergency Planning Committee (LEPC) requirements under the changes to the 40 CFR Part 68 (Risk Management Plan) as not all communities have active LEPCs and would appreciate the opportunity to discuss this issue further with EPA.

## **Refrigeration**

Walmart also has significant concerns regarding the regulatory burden associated with new commercial refrigeration regulations. Walmart thanks EPA for this opportunity to inform the Agency of the some of the more onerous changes to the Significant New Alternatives Policy (“SNAP”) program promulgated under the Clean Air Act (“CAA”)<sup>2,3</sup> affecting its business, and predominantly its store remodel program, over the next several years. Specifically, Walmart suggests the following revisions:

- Allow supermarkets the flexibility to make the kind of minor expansions of existing systems that are typical during a remodel, such as adding a produce or cheese island, utilizing existing refrigerants, as long as the minor changes don’t significantly alter the intent or capacity of the system until other options are available.
- Revise the refrigerant management requirements so that systems that have undergone previous repairs to all leaks would not be subject to annual or quarterly leak inspections.

## **Introduction**

Walmart strives to be an environmental leader and believes everyone benefits when we work with regulators to develop policies and regulations that achieve environmentally protective results and make sound business sense. Walmart is committed to environmentally sustainable business practices and has been recognized as one of the world’s leading companies in the sustainability arena.<sup>4</sup>

Domestically, Walmart operates more than 5,000 retail stores, employs over 1.4 million associates, and serves over 140 million customers every week. Walmart retail stores are comprised of a mix of grocery, general merchandise, pharmacy, and membership-oriented stores. Walmart is privileged to do business in the United States and understands that compliance with environmental laws is a pre-requisite to the success and sustainability of our business.

## **1. Hazardous Waste - Consumer Products, RCRA and the Retail Sector**

The retail sector of the American economy has struggled when RCRA hazardous waste regulations, crafted with complex industrial plants in mind, are applied to neighborhood department stores, supermarkets, pharmacies or convenience stores. Walmart has expended considerable effort to meet

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<sup>2</sup> See: “Protection of Stratospheric Ozone: Change of Listing Status for Certain Substitutes Under the Significant New Alternatives Policy Program”; Final Rule; 40 CFR Part 82 Vol. 80, No. 138 (July 20, 2015).

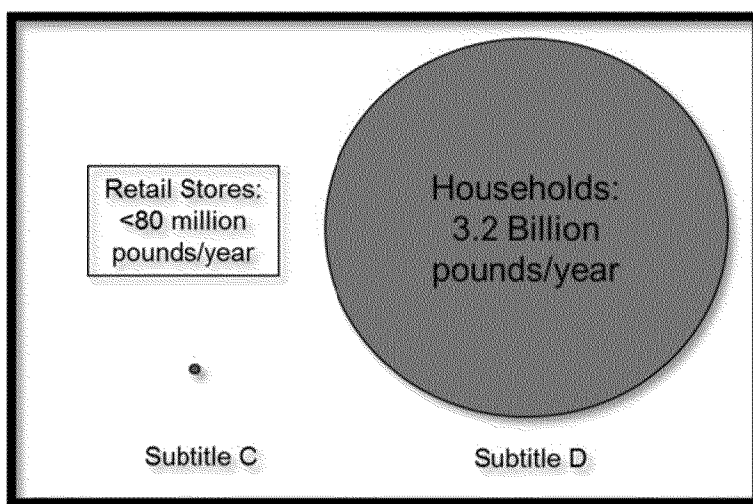
<sup>3</sup> See: “Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements under the Clean Air Act”; Final Rule; 40 CFR Part 82 Vol. 80, No. 223(November 16, 2016).

<sup>4</sup> Walmart has three aspirational sustainability goals: 1) Create Zero Waste; 2) Be Powered by 100% Renewable Energy; and 3) Sell Products that Sustain People and the Environment. For information on Walmart’s sustainability initiatives, accomplishments, and commitments, please visit [walmartsustainabilityhub.com](http://walmartsustainabilityhub.com).

the requirements of RCRA and can attest that the intersection of consumer retail and RCRA is most aptly described as the proverbial “square peg in a round hole.”

As EPA recognized in the recent retail Notice of Data Availability (Docket ID No. EPA-HQ-RCRA-2012-0426) (“NODA”) (February 14, 2014) and resulting Strategy for Addressing the Retail Sector under RCRA’s Regulatory Framework (September 12, 2016), significant challenges exist for the Retail Sector regarding the RCRA’s application to consumer products.<sup>5</sup> Walmart commends EPA for its efforts to begin addressing the unique retail issues since RCRA regulations were not designed with retail businesses and consumer products in mind.

This is particularly true for “consumable” consumer products, which are those products sold to the general public for consumption in or on the body.<sup>6</sup> In fact, EPA has already exempted the vast majority of consumer products from management under RCRA Subtitle C through its development of the household hazardous waste exclusion in 40 CFR 261.4(b)(1). As a result of RCRA’s household waste exclusion, tens of billions of pounds of consumer product waste, including several billion pounds of RCRA hazardous wastes, are safely managed under the Subtitle D solid waste program. In contrast, Walmart has estimated that the entire Retail Sector disposes of less than 80 million pounds of RCRA hazardous consumer products per year, much of which is also managed pursuant to Subtitle D because it is generated by conditionally exempt retail businesses or by businesses that simply have no understanding of RCRA and/or make no attempt to comply with RCRA as it relates to consumer products.<sup>7</sup> Hence, only a very small percentage of discarded consumer products are generated by retail businesses that are subject to and comply with Subtitle C as RCRA Small or Large Quantity Generators (SQGs and LQGs).



Depicted are estimates for the different destinations of Consumer Product RCRA Hazardous Waste.

<sup>5</sup> See EPA’s Retail NODA dated February 14, 2014 and Walmart’s comments as part of the NODA official record.

<sup>6</sup> The Wall Street Journal had it correct in the Article on January 18, 2011, titled “Toward a 21<sup>st</sup>- Century Regulatory System” - “[I]f it goes in your coffee, it is not hazardous waste”

<sup>7</sup> For a description of the calculations and assumptions used in the estimate, see page 6 of Walmart’s NODA response.

Therefore, the present application of RCRA results in an off-kilter regulatory scheme where approximately 99% of discarded hazardous consumer products by weight are managed under Subtitle D while less than 1% by weight are subject to full Subtitle C RCRA regulation. If hazardous consumer products are truly an environmental threat requiring Subtitle C regulation, then the current regulatory scheme is clearly backwards. Fortunately, consumer products and, particularly consumable consumer products, are not an environmental threat when managed under Subtitle D. Literally billions of consumer products have been managed under the Subtitle D program for decades, and continue to be managed, without issue.<sup>8</sup>

As EPA recognized through the Retail NODA process, reform of RCRA's application to the Retail Sector and consumer products is necessary and should be a top priority in the near term. Applying full Subtitle C regulation to only 1% of the discarded consumer products does not produce any tangible environmental or human health benefits but does come at a significant economic cost. This places an undue regulatory burden on a sector of the economy ill-equipped to handle it. For the reasons discussed in the Retail Sector's responses to the Retail NODA, retail stores face extraordinary hurdles attempting to comply with RCRA, including large numbers of locations and the requirement to evaluate millions of unique consumer products against RCRA's complex waste characterization scheme.<sup>9</sup>

The Retail Associations estimated in their comments to the Proposed Generator Improvements Rule, retail stores represent over a quarter of the registered LQGs in the country based on 2013 biennial reporting data. This is primarily because of discarded smoking cessation products that contain nicotine, such as nicotine gum. Presumably, no one at EPA had retail stores in mind when developing the hazardous waste management rules for LQGs. To the contrary, EPA likely contemplated that facilities generating little hazardous waste would be categorized as Conditionally Exempt Small Quantity Generators (CESQG), such as retail stores producing the same type of waste as households. With over 5,000 retail stores currently registered as LQGs, the seemingly common sense generator status framework under RCRA has been upended with retailers representing the single largest group of highly regulated hazardous waste generators.<sup>10</sup>

While the economic impacts and operational difficulties imposed by RCRA on the Retail Sector are an undue regulatory burden, enforcement has now aggressively followed RCRA's application to retail and consumer products. Environmental enforcement offices at both the federal and state level find easy targets in businesses that literally had no understanding of how EPA and states would apply RCRA to long-standing retail business practices. Many of the largest RCRA fines in the last five years are

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<sup>8</sup> Modern Subtitle D landfills are well engineered facilities that are located, designed, operated, and monitored to ensure compliance with federal regulations. Applicable federal landfill standards include: location restrictions, composite liner requirements, leachate collection and removal systems, operating practices requirements, groundwater monitoring requirements, closure and post-closure care requirements, corrective action provisions, and financial assurances. (see EPA website: <https://www.epa.gov/landfills/municipal-solid-waste-landfills#whatis>)

<sup>9</sup> Retailers also need to deal with high employee turnover, manage the public interaction within these facilities, train employees to handle the same products they safely use at home every day as hazardous waste, and deal with ingredients that are trade secrets, to name a few of the additional challenges.

<sup>10</sup> As noted in the Retail Associations' comments to the Proposed Generator Improvements Rule, December 23, 2015, page 10, retailers are the single largest group of hazardous waste generators, and may well represent over half of the affected entities (although the amount of hazardous wastes they generate represents an almost negligible percentage of the total hazardous waste generation in the country).

against retail business and involve consumer products. In particular, many of these cases involve reverse distribution, a standard part of all retail operations. Reverse distribution essentially involves the withdrawal and consolidation of consumer products that are not sold in retail stores. Reverse distribution processes were developed long before RCRA, and far from being an attempt to avoid RCRA, reverse distribution is a legitimate, multi-billion dollar industry that is good for the environment and the public. Standing alone, Walmart's own reverse distribution operations would be a Fortune 500 company.<sup>11</sup>

Reverse distribution facilitates the inventory process for credit, accounting, and recall confirmation along with a reduction in the amount of waste generated. It allows the efficient return of consumer products back to suppliers. Importantly, reverse distribution also creates markets for excess consumer products, which can be donated or liquidated. Through donation, liquidation, and returning unsold consumer products to suppliers, the Retail Sector reduces the unnecessary creation of waste, puts consumer products to their highest and best use, and furthers the public good by providing additional resources in the form of donations and reduced prices on consumer products in second tier markets. Hence, Walmart believes that EPA should take every step possible to encourage and facilitate the reverse distribution of consumer products. Reverse distribution is synonymous with resource conservation and recovery and ultimately reduces the generation of waste.

### **Recommendations: Hazardous Waste - Consumer Products, RCRA and the Retail Sector**

In light of President Trump's Executive Order, Walmart respectfully suggests that EPA take this opportunity to address these concerns and make RCRA regulation more effective and less burdensome on the Retail Sector. Specifically, Walmart asks EPA to carefully consider and implement the following suggestions:

1. Amend 40 CFR 261.4(b)(1) to include Consumer Products as Household Waste regardless of the location of their generation.

Walmart respectfully requests that EPA consider amending RCRA so that consumer products are managed in a similar way as household waste pursuant to RCRA Subtitle D regardless of where waste consumer products are generated. This could be accomplished by amending the current household waste exclusion in 40 CFR 261.4(b)(1) to include discarded consumer products typically found in household trash and garbage. Walmart believes EPA could resolve the majority of the issues of the regulatory fit between RCRA and the Retail Sector by acknowledging that discarded consumer products fit within the household waste exclusion under RCRA.

The definition could be amended as follows:

*Household waste means garbage and trash composed primarily of materials typically found in the waste generated by consumers in their homes (including discarded consumer products, yard waste, and sanitary wastes in septic tanks).*

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<sup>11</sup> Walmart Return Centers process in excess of one billion dollars of credit each year. This figure does not include the additional revenues generated at the Return Centers through liquidation, recycling, and tax benefits from donations. See page 48 of Walmart's response to the NODA.

As an alternative to excluding all consumer products under the household waste exclusion in 40 CFR 261.4(b)(1), Walmart proposes that EPA consider including “consumable” consumer products as an additional exclusion under 40 CFR 261.4(b). These products are regulated by other federal agencies and laws and are literally safe to consume.

## 2. Expansion of Universal Waste Rules to Cover Consumer Products

Another potential solution is to expand the definition of Universal Wastes to include all or some consumer products when discarded by retailers. This proposal would have many positive benefits to retailers but still allow EPA to retain a greater level of regulatory authority than an outright exemption. The Universal Waste rule recognizes that there are some materials that, while technically hazardous waste when discarded, warrant less strict management and disposal requirements because of the limited risks associated with their disposal and the wide-spread nature of their distribution. Consumer products fit well within the Universal Waste framework – there are clearly limited risks associated with their management and disposal since the general public handles and disposes of millions of identical consumer products every day.

Recognizing this as a sensible solution for consumer products, EPA previously began the process of analyzing whether to expand the definition of Universal Waste to include consumer products. In 2007, EPA concluded that adding consumer products in consumer product packaging was “appropriate because these wastes are produced by a various and vast community of generators and are often mismanaged due to... retail chain employees being unfamiliar with the Resource Conservation and Recovery Act regulations. This proposed action will streamline the current regulations governing these wastes, ensuring that... consumer product wastes are properly managed...” 72 Fed. Reg. 23281 (Apr. 30, 2007). Therefore, managing consumer products as Universal Waste has already been reviewed and could be easily implemented.

## 3. Protect the Legitimate Business Process of Reverse Distribution

Walmart believes that products sent through reverse distribution networks are not yet wastes where there is a legitimate business purpose for shipping them to consolidation points such as accounting, potential credit, return to the supplier, potential liquidation, or potential donation. Until a given consumer product is actually discarded, it is not yet a solid waste under RCRA and cannot therefore, be a hazardous waste. To clarify its position, EPA could simply reiterate in new guidance the statement it has previously made in the 2008 preamble to the proposed Pharmaceutical Waste Rule<sup>12</sup>, expanding its logic to all consumer products. An alternative would be to amend 40 CFR 261.4(a) to explicitly state that consumer products in reverse distribution are not solid waste.

## 4. Clarification around Recycling of Aerosol Cans

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 complexity and uncertainty, retailers often handle all their unsold,

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<sup>12</sup> See: “Amendment to the Universal Waste Rule: Addition of Pharmaceuticals, Proposed Rule; Federal Register Vol. 73, No. 232. (December 2, 2008).

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 approximately half of Walmart's hazardous waste stream. Walmart 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.

#### 5. Exemption of Nicotine Replacement Therapy Products from RCRA Regulation

Current EPA regulations classify nicotine replacement therapy products -- such as nicotine patches, gums, lozenges, and e-cigarettes -- as "acutely hazardous waste." This classification stems from an outdated regulation issued in 1980 when the only nicotine products on the market were pesticides containing up to 40 percent nicotine.

Nicotine replacement therapy products are clearly not acutely hazardous. Medical professionals recommend that their patients, our customers, apply these products to their skin or chew them to help quit smoking tobacco. There is no reason why the EPA should continue to classify these products as acutely hazardous wastes when they are disposed. Walmart strongly urges EPA to reclassify nicotine replacement therapy products as "non-acutely hazardous waste."

#### 6. Repeal of the Final Rule on Hazardous Waste Generator Improvements

Finally, for several years, the retail sector 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 sector, the compliance costs under the final rule will vastly outweigh any environmental benefit. Walmart strongly urges the EPA to repeal the rule, or at least delay the effective date of the rule so that the Agency can conduct a thorough review of the impacts to the retail sector. If the agency expects the retail sector to benefit from the LQG consolidation process as outlined, it needs to ensure it is considered more stringent (and it is as compared to disposal as municipal solid waste) so that it must be adopted by all states. Otherwise, this supposed benefit will not be practical across multiple states.

## **2. Refrigeration – Retail Supermarket**

EPA has previously finalized several changes to the listing status of certain substitute refrigerants along with their related management requirements in commercial refrigeration systems under SNAP and the CAA. EPA's stated dual objectives prompting these rulemakings were the elimination of substitute refrigerants which pose a risk to human health and the environment along with a reduction of releases associated with the use of these substances in commercial and industrial process refrigeration

appliances.<sup>13</sup> While these goals are laudable, the cumulative effect of EPA's rulemakings with respect to supermarket refrigeration systems has created an undue regulatory burden that will be difficult to navigate as Walmart works to ensure compliance.

## A. Impact of SNAP Final Rule

Section 612 of the CAA gives EPA the authority to regulate ozone-depleting and high global warming potential ("GWP") substances by giving the agency the ability to periodically delist certain of these substances from accepted use in both the public and private sector. This grant of authority allows EPA to regulate the use of refrigerants, including those refrigerants used in commercial cooling, industrial process refrigeration, and supermarket retail refrigeration. On August 6, 2014, EPA published its proposed rule to delist R-404A, R-422D, and R-507A as acceptable refrigerants in supermarket refrigeration systems. Numerous manufacturers, suppliers, and end-users representing a varied cross-section of businesses entities and trade associations commented on the proposed rule. Walmart collaborated on and endorsed comments submitted by the Food Marketers Institute ("FMI") in response to the proposed rule.

Walmart operates approximately 5,000 locations across the United States. More than half of these locations currently utilize refrigerants that EPA has recently delisted under the SNAP program.<sup>14</sup> Under the SNAP Final Rule, these systems will require future replacement or conversion at the end of their "useful life."<sup>15</sup> The SNAP Final Rule prohibits any new commercial refrigeration system<sup>16</sup> installed after January 1, 2017 from utilizing R-404A, R-422D, and R-507A. EPA interprets "new system" to be synonymous with new appliance, which is defined by "the date upon which the [system or] appliance's refrigerant circuit is complete, the appliance can function, the appliance holds a full refrigerant charge, and the appliance is ready for use for its intended purposes."<sup>17</sup>

Under the regulations, an existing system which supports, for example, a series of supermarket display cases would only be considered "new" if a remodel or expansion of that system "changes the intended purpose of the original equipment, for instance by adding additional cases, compressors, and refrigerant that were not supported by the original compressor system."<sup>18</sup> However, EPA qualified this regulatory language in guidance by referencing a fact sheet that helped explain changes to the R-22 phase-out in 2010. In that referenced guidance document, EPA stated that a supermarket may undergo

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<sup>13</sup> See: "Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements under the Clean Air Act"; Final Rule; 40 CFR Part 82 Vol. 80, No. 223. (November 16, 2016).

<sup>14</sup> Walmart has 484 locations which use R-22, 2345 locations which use R-404A, 319 locations which use R-422D, and 3 locations which use R-507A for their centralized refrigeration system.

<sup>15</sup> "Useful life" is not defined under the SNAP program at § 40 CFR 82.172 or at U.S. Code § 7411 of the CAA.

<sup>16</sup> EPA is somewhat unclear as to what constitutes a "system" under the final rule. Walmart interprets EPA to mean that that a "system" comprises the individual circuit which contains compressors, condensers, evaporators, or other components of a refrigeration loop, and not the entire series of "racks" used by a store. This is supported by EPA in its commentary restated here: "Rather such units would fall within the end-use category "supermarket system" if the refrigerant is supplied on the same multi-compressor circuit used to cool food elsewhere in the store." See: 80 Fed. Reg. at 42901.

<sup>17</sup> See: 40 CFR 82.3, 82.302

<sup>18</sup> See: 80 Fed. Reg. at 42903.

an expansion and continue to use the existing refrigerant only “if there is sufficient cooling capacity within the system to support the expansion.”<sup>19</sup>

EPA did agree with FMI’s 2014 comments concerning the changes to display cases, indicating that replacement of display cases with cases that operate at higher evaporator temperatures would not deem the system supporting these cases as “new,” as the resulting increased system efficiency would not be in contravention of the system’s original intended purpose.<sup>20</sup> Similarly, EPA agreed that installing new compressors or condensers which were designed for a refrigeration system’s original capabilities would also be considered by EPA as a servicing or maintenance event, not triggering the redefining of the system as “new,” and thus not mandating a change of refrigerant.

While Walmart is thankful EPA has taken those positions, we are still very concerned that the practical effect of EPA’s interpretation still may have the result of essentially defeating its original intent behind the grandfathering of existing systems throughout their “useful life” because minor additions to systems common in store remodels, such as the addition of a produce or cheese island, could trigger an immediate change of refrigerant. Under the SNAP Final Rule, EPA has codified that **any expansion** including the addition of one or more compressors to a refrigerant system that increases cooling capacity would deem the refrigerant system (or circuit) to be a “new system,” necessitating a transition to a new SNAP-approved refrigerant with a lower GWP. Thus, existing refrigeration systems in stores undergoing remodels and expansions can continue to be maintained and serviced for the useful life of the equipment using delisted refrigerants, including R-404A, R-422D, and R-507A—only so long as additional refrigeration capacity, no matter how incremental, is not added to the system.

In practice, without the option of making small cooling capacity increases to supermarket refrigeration systems using delisted refrigerants, the effect of SNAP Final Rule is to relegate businesses, and especially retail businesses attempting to make minor additions to refrigerated offerings, into 1) undergoing complete refrigerant conversions to SNAP-approved refrigerants, or 2) utilizing remote condensing units (“RCUs”)<sup>21</sup> or stand-alone cases.

First, the refrigerant conversions of systems using, for example R-404A, to SNAP-approved refrigerants such as R-407A/C, can represent a significant financial and operational impact to the store. As indicated, nearly half of Walmart’s facilities use R-404A in their centralized refrigeration systems. These existing facilities are scheduled to be remodeled in the next 3-5 years, adding refrigerated space in small applications such as multi-deck beer cases, produce or cheese islands, liquor-box additions, or bakery and deli expansions. Conservatively, this approach in dealing with the SNAP Final Rule would be an undue burden in compliance costs incurred by Walmart, as well as the retail sector broadly, when business decisions surrounding remodel programs prompt a need for refrigerant conversions.<sup>22</sup> Assuming a similar timeline for the delisting of both R-22 and R-404A, Walmart has concerns that after transitioning to refrigerants such as R-407A/C in the short term, it will once again be faced with the

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<sup>19</sup> See: [http://www.epa.gov/ozone/title6/phaseout/Supermarket Q&A for R-22.html](http://www.epa.gov/ozone/title6/phaseout/Supermarket%20Q&A%20for%20R-22.html)

<sup>20</sup> See: 80 Fed. Reg. at 42903.

<sup>21</sup> EPA states that “remote condensing” is used to indicate systems where the condensing unit and compressors are located remotely from where food is stored or displayed and instead the refrigerant or secondary-fluid is piped to the cases or rooms where the food is located. See: 80 Fed. Reg. at 42901.

<sup>22</sup> Assuming the least costly scenario, where only 1/3 of remodels would be extensive enough so as to warrant a complete conversion.

prospect of having to transition a large portion of its fleet of stores away from R-407A/C as other substitute refrigerants with lower GWPs become more economically practical and commercially available.

Second, the use of RCUs or stand-alone cases to support minor additions to refrigerated space presents other problems related to accessibility and monitoring. RCUs can be more costly in terms of installation, servicing and/or maintenance repair work. Due to other recently enacted regulations,<sup>23</sup> this would impose even more of a burden on businesses needing to install multiple RCUs to achieve desired refrigeration objectives during expansions or store remodels. The commercial availability of RCUs utilizing multiple compressor technologies coupled with the current limited capacity selections, results in units that are oversized, making them unsuitable or difficult to use in small expansions during a store remodel. Stand-alone units and hermetically sealed RCUs, which are more widely available and use acceptable refrigerants, are often more costly. Moreover, these potential options could actually be counterproductive to the intent of the SNAP Final Rule. Stand-alone units have the condensing unit embedded into the specific case they support, which increases overall energy consumption (and thus carbon footprint) due to the necessity of expelling the heat produced by their operation through the building air conditioning system. RCUs being developed by industry and operating with R-448/449 are still undergoing required safety testing, with no exact timeline of broad commercial availability.

Walmart recognizes that the intent of the SNAP Final Rule is for businesses to transition away from the use of refrigerants with high GWPs that could harm the environment. However, Walmart feels that the current structure of the regulation, including the previously enacted and proposed phase-out dates for refrigerants (particularly R-404A in centralized systems and RCUs) does not allow for alternatives to be employed which provide adequate flexibility to businesses in the retail sector while simultaneously decreasing high GWP refrigerant emissions. Accordingly, Walmart encourages EPA to allow for refrigeration systems utilizing R-404A, R-422D, and R-507A to increase cooling capacity by a preset limit of 15% of the system's original capacity. This change would serve multiple purposes:

- Preserving EPA's intent of allowing grandfathered refrigeration systems to be used for the duration of their useful life without the need for complete refrigerant conversions to SNAP-approved refrigerants during remodels that only minimally change the intent and capacity of the system, as a minor remodel is very common during the useful life of the equipment.
- Allowing more time for manufacturers of RCUs utilizing SNAP-approved refrigerants to make available units designed for smaller applications and which are more energy efficient.

Alternatively, if EPA is unwilling to allow for any increased usage of R-404A, R-422D, and R-507A in existing systems, Walmart suggests prolonging the phase-out date of January 1, 2018 for RCUs utilizing R-404A, R-422D, and R-507A to January 1, 2020. By EPA's own assessment, the delisting of

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<sup>23</sup> See: *Infra*. (Leak inspection requirements under the Refrigerant Management Final Rule).

RCUs using R-404A, R-422D, and R-507A is only expected to account for approximately 3% of the total emissions reduction under the SNAP Final Rule through 2020.<sup>24</sup>

In conclusion, EPA should reassess its position on the phase-out of certain refrigerants (and in particular, R-404A) under the SNAP Final Rule.

## **B. Impact of Refrigerant Management Requirements Final Rule**

Walmart previously provided comments to EPA regarding its Update to the Refrigerant Management Requirements under the Clean Air Act Final Rule.<sup>25</sup> In its proposal, EPA requested comment on whether the leak rate triggering a leak repair should be reduced from 35% to 20% for commercial refrigeration appliances and from 20% to 10% for comfort cooling appliances.<sup>26</sup> Walmart agreed with this portion of the proposed rule, as well as the requirement that once a leak repair is triggered by an appliance breaching the preset threshold, all leaks (within a certain scope of practicality)<sup>27</sup> would need to be repaired. In its Final Rule, EPA not only lowered the applicable leak rates requiring a repair in these instances, but also used these leak rates as a basis to trigger quarterly and annual leak inspections. Because the Final Rule requires that all leaks be repaired once the applicable leak rates are breached, mandating that an appliance be inspected on a recurring basis after being completely repaired and passing follow-up verification testing will be of negligible benefit to reducing emissions from these stationary sources. If an appliance has been completely repaired and its system parameters can be monitored remotely from a different location, substantial economic waste would be incurred by businesses conducting leak inspections on appliances that are not leaking.

In its commentary to the proposed rule, Walmart voiced several concerns surrounding mandatory leak inspections, including the unavailability of qualified refrigeration service technicians to perform leak inspections on commercial refrigeration and comfort cooling appliances, the uncertainty surrounding the definition of “leak inspection,” as well as safety concerns that would arise should, as EPA suggested, “someone” perform the leak inspections as oppose to in-house or third-party service technicians.<sup>28</sup> In an effort to reiterate these concerns, Walmart encourages the Agency to look at several industry articles and other publications outlining the scarcity of qualified service technicians<sup>29,30</sup> entering the

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<sup>24</sup> See: “Climate Benefits of the SNAP Program Status Rule Change”; (July 2015). EPA estimates that the SNAP Final Rule will reduce emissions of target refrigerants in RCUs by 1 million metric tons of carbon dioxide equivalent (“MMTCO<sub>2</sub>eq”). By comparison, the entire program is estimated to reduce emissions by 29.5 MMTCO<sub>2</sub>eq.  $1/29.5 \times 100 = 3.389\%$

<sup>25</sup> See: EPA-HQ-OAR-2015-0453; Letter to EPA Docket Center from Rick Leahy, Vice President, Walmart EH&S Compliance, (January 25, 2016)

<sup>26</sup> 40 CFR Part 82. Vol. 80. No. 216 at 69510

<sup>27</sup> See: *Id.* at 69495. “EPA is seeking comments on whether the agency should create a limited exception, which would provide that if upon further inspection (through bubble tests or other means), sound professional judgment indicates an individual identified leak is not the result of a faulty component or connection and that refrigerant releases would not be reduced from repair or adjustment, the leak would not need to be repaired. If this proposal is finalized, EPA would likely require that the justification for the determination be noted in the appliance’s service records. EPA notes that there are certain types of situations that would never meet these conditions, including but not limited to when a component has holes, cracks, or improperly seated seals. All other leaks would still need to be repaired if the applicable leak rate is exceeded.”

<sup>28</sup> EPA-HQ-OAR-2015-0453; Letter to EPA Docket Center from Rick Leahy, Vice President, Walmart EH&S Compliance, (January 25, 2016)

<sup>29</sup> See: <http://www.achrnews.com/articles/128114-solving-the-hvacr-technician-shortage>

labor force. When coupled with the number of retirees expected to leave the industry over the next few years, the strain on local markets attempting to hire qualified technicians will be very significant. In turn, wages for workers and associated service call rates could increase, increasing the costs to businesses trying to conduct their operations compliantly in an uncertain economic climate.

### **Recommendations: Retail Supermarket Refrigeration**

Walmart strongly encourages EPA to reassess some of the aspects and cumulative impacts of the SNAP Final Rule and the Refrigerant Management Requirements Final Rule. As alternatives, Walmart asks EPA to carefully consider:

1. Allowing supermarkets the flexibility to make the kind of minor expansions of existing systems that are typical during a remodel, such as adding a produce or cheese island, utilizing existing refrigerants, as long as the minor changes don't significantly alter the intent or capacity of the system until other options are available.
2. Revising the refrigerant management requirements so that systems that have undergone previous repairs to *all* leaks would not be subject to annual or quarterly leak inspections.

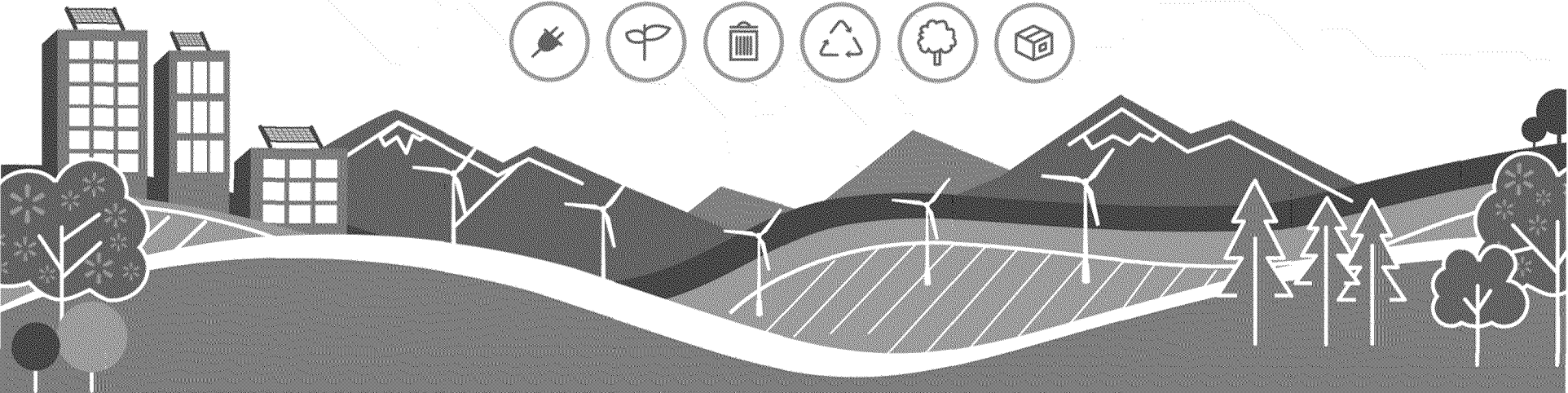
### **Conclusion**

Walmart truly appreciates EPA granting it the opportunity to submit these comments. Moving forward, Walmart stands ready to work with EPA to follow up on any or all of the specific issues mentioned or other areas with unique impacts to the retail sector. Walmart is open to providing additional information or data to EPA and is available to answer questions EPA might have. By working together in an open and cooperative manner, Walmart believes it is possible to design and implement regulations that are protective of human health and the environment and make sound business sense.

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<sup>30</sup> See: [http://www.careersinhvacr.org/Portals/\\_Appleseed/documents/Executive%20Summary.pdf](http://www.careersinhvacr.org/Portals/_Appleseed/documents/Executive%20Summary.pdf)

# Project Gigaton™



# Walmart announced new goals in November 2016



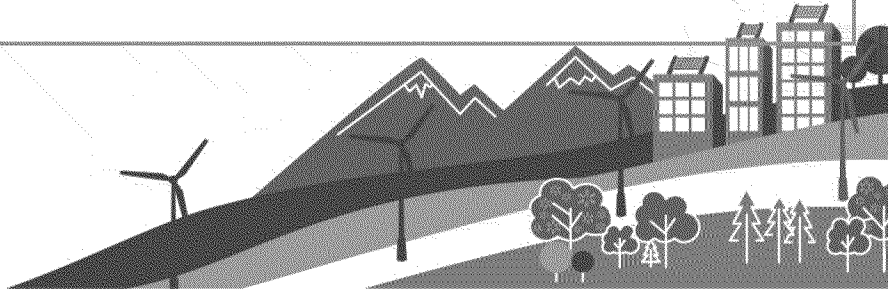
*Doug McMillon  
Walmart CEO  
November 4, 2016*

“ We will power half of our energy from renewable sources....and to be the first retailer with an emissions-reduction plan approved by the Science Based Targets Initiative.... This means we work to achieve an 18 percent absolute emissions reduction in our operations by 2025.

**And we will work with our suppliers to reduce 1 GT of emissions in our supply chain by 2030 - equivalent to taking more than 211 million passenger vehicles off of U.S. roads and highways for a year.”**

**ProjectGigaton**

Walmart Sustainability Milestone Summit



# Project

## Six Pillars



### Energy

Renewable Energy

Energy Efficiency

Fleet Efficiency



### Agriculture

Fertilizer Optimization

Animal Agriculture



### Waste

Food and Solid Waste

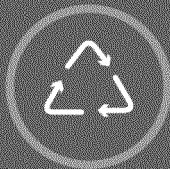
Reduction

### Strategic Contributors:



# ctGigaton™

*of the Program*



## Packaging

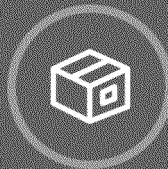
Using Recycled  
Content

Recycling



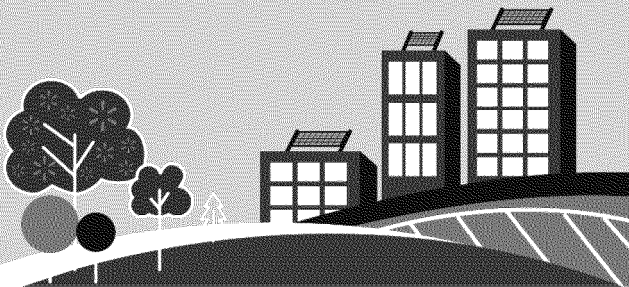
## Deforestation

Avoid Deforestation



## Product Use

More energy efficient  
products



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walmartsustainabilityhub.com

ProjectGigaton™



## Walmart Global Responsibility

Environmental sustainability has become an essential ingredient to doing business responsibly and successfully. As the world's largest retailer, our actions have the potential to save our customers money and help ensure a better world for generations to come. At the same time, it sets the stage for a more financially stable and responsible Walmart.

### Walmart's Sustainability Goals:

- **Power half of the company's energy from renewable sources by 2025**, as part of a plan designed to achieve science-based targets for reducing greenhouse gas emissions. Walmart will use a combination of energy-efficiency measures, together with expanded use of renewable energy, to reduce emissions in its own operations by 18 percent by 2025. Additionally, Walmart will work with suppliers to reduce emissions by **1 Gigaton by 2030**, *equivalent to taking more than 211 million passenger vehicles off of U.S. roads and highways for a year.*
- **Achieve zero waste to landfills in key markets by 2025.** Progress so far has been significant on the original goal. In 2015, seventy-five percent of Walmart's global waste was diverted from landfills, helping to reduce costs to the business, customers and society. Under the roadmap, the company will achieve *zero waste* to landfill from our own operations in key markets, including the U.S., U.K., Japan, and Canada by 2025.
- **Sell more sustainably produced products while maintaining the low prices customers expect.**
  - **Packaging:** Walmart pledges to work with suppliers to reduce product and packaging waste and preserve natural resources. Walmart's private brand packaging goal is to be 100 percent recyclable by 2025.
  - **Affordable, safe and healthier:** Walmart will double the sales of locally grown produce in the U.S. by 2025 and work with suppliers and its own private brand products to remove certified synthetic colors and artificial flavors in products where customers don't expect to find them, as well as reduce sodium, added sugars and saturated fat where possible. Additionally, Walmart will expand and enhance sustainable sourcing to cover 20 key commodities, including bananas, grapes, coffee, and tea.
  - **Natural resources:** Walmart is expanding sourcing of commodities produced with zero net deforestation. In partnership with governments, NGOs and industry groups, Walmart has previously been working to source private-brand palm oil and beef from Brazil's Amazon with zero net deforestation. Under the roadmap, Walmart will expand its work into additional critical commodities, including all Brazilian soy and private-brand pulp and paper.

### 2017 Launch of Project Gigaton

At Walmart's annual Sustainability Milestone Summit in April, the company launched a sustainability platform inviting suppliers to join Walmart in committing to reduce greenhouse gas emissions resulting from their operations and supply chains.

The goal of **Project Gigaton** is to **remove 1 Gigaton (one billion tons) of emissions from Walmart's value chain by 2030**, as outlined in our science-based targets emissions-reduction plan. Project Gigaton will rely on the support of our suppliers, and will supplement Walmart's goal to reduce absolute emissions in its own operations by 18% from 2015 levels by 2025.

Walmart has identified **energy, agriculture, waste, packaging, deforestation, and product use and design** as the areas in which to focus.

## **Science Based Targets**

Walmart is the first retailer with a verified science-based target emissions-reduction plan. The company aims to reduce its absolute Scope 1 and 2 emissions by 18 percent by 2025. Through Project Gigaton, Walmart will also work to reduce CO<sub>2</sub>e, or carbon dioxide equivalent, emissions from upstream and downstream Scope 3 sources by one billion tons between 2015 and 2030.

The Science Based Targets initiative is a partnership between CDP, UN Global Compact, WRI and WWF, and helps companies determine how much they must cut GHG emissions to prevent the worst impacts of climate change. The specific process Walmart followed was based on what is referred to as a sectoral decarbonization approach (SDA). This process considers a company's current performance, the unique opportunities and challenges of the industry sector in which they fit, and allocates reduction targets accordingly based on this information. You can read more here: <http://sciencebasedtargets.org/methods/>.

## **Business Case**

Project Gigaton is part of a series of Walmart sustainability initiatives, focused on addressing social and environmental issues in ways that help communities, while also strengthening business. To incite suppliers' participation, Walmart is sharing the business case for why suppliers should pursue reducing emissions and consider signing on to Project Gigaton. For example, by investing in solar energy, Walmart has helped to support jobs for American solar companies. Walmart is now one of America's leading commercial solar and on-site renewable energy users and gets about 25 percent of its global energy from renewable sources. To give another example, by doubling the efficiency of our U.S. fleet from 2005 to 2015, Walmart saved nearly \$1 billion compared to a 2005 baseline.

## **Measuring Success**

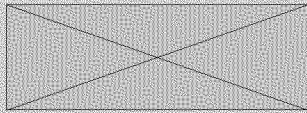
To support suppliers in their commitments to reduce emissions, Walmart launched a digital resource center toolkit to help suppliers establish emission reduction projects. In this resource center, Walmart highlights the business case for why suppliers should consider reducing their emissions and signing on to Project Gigaton. Companies and organizations that want to sign up to participate in Project Gigaton or get resources to learn more about reducing emissions, can visit [www.walmartsustainabilityhub.com](http://www.walmartsustainabilityhub.com).

The company will also leverage the **Sustainability Index** and other tools to better engage suppliers and encourage continuous improvement, while continuing to work with them and others on emission reductions deep in the supply chain; from the farm and factory, through consumer use and disposal. The Sustainability Index, which is our tool to track progress on important sustainability metrics in our supply chain, includes several categories such as the quantitative amount of greenhouse gases used to produce a given product in a year.

Walmart has partnered with **CDP** ([www.cdp.net](http://www.cdp.net)) as the official body for tracking and reporting progress on Project Gigaton. Suppliers are encouraged to formally report through CDP under the appropriate section of the CDP such that cross-reference is possible between the Project Gigaton Hub and the CDP.

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