



**THE VOICE OF FOOD RETAIL**

Feeding Families  Enriching Lives

October 3, 2012

U.S. Department of Transportation  
Docket Operations, M-30  
Ground Floor, Room W12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**RE: Comments of Food Marketing Institute  
Hazardous Materials; Reverse Logistics (RRR)  
Docket No. PHMSA -2011-0143 (HM-253)**

Dear Sir or Madam:

The Food Marketing Institute (“FMI”) appreciates the opportunity to comment on the questions and issues presented in the advance notice of proposed rulemaking on transporting hazardous materials in the reverse logistics supply chain.<sup>1</sup> Reverse logistics, including the handling, transportation, and disposal of “unsaleables,”<sup>2</sup> is an important issue for grocery stores and pharmacies and we are glad to see this issue addressed by PHMSA.

FMI conducts programs in public affairs, food safety, research, education, and industry relations on behalf of its nearly 1,250 food retail and wholesale member companies in the United States and around the world. FMI’s U.S. members operate more than 25,000 retail food stores and almost 22,000 pharmacies with a combined annual sales volume of nearly \$650 billion. FMI’s retail membership is composed of large multi-store chains, regional firms, and independent operators. FMI’s nearly 300 associate members include the supplier partners of its retail and wholesale members.

Facilitation of the movement of hazardous materials in the reverse logistics supply chain with less burdensome regulations has the potential to reduce compliance costs for food retailers and will also benefit consumers who bear a share of regulatory costs in the checkout lane. FMI supports the addition of a regulatory definition of “reverse logistics” to 49 CFR 171.8. Further, FMI is in favor of adding a section to part 173 outlining shippers’ responsibilities for the handling of hazardous materials in reverse logistics, including classification of materials, training requirements, and packaging guidelines.

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<sup>1</sup> 77 Fed. Reg. 39662 (July 5, 2012).

<sup>2</sup> “Unsaleables” are consumer products which are removed from the primary channel of distribution for any reason and which may or may not be processed through product reclamation centers. Such products include items recalled by the manufacturer, damaged, or expired.

With respect to the items returned to and by FMI's member companies, these generally include only small quantities of hazardous materials and present minimal danger to public health and safety. As such, FMI strongly supports less burdensome Hazardous Materials Regulations (HMR) requirements for shipments in the reverse logistic supply chain.

FMI's response to certain of the questions posed by PHMSA in the advance notice of proposed rulemaking follows.

- **What the types of hazardous materials and quantities that are frequently returned? (PHMSA Question 1)**

FMI member companies return a variety of products containing hazardous materials, including: aerosol cans (e.g., oven cleaner, baking spray, hairspray); flammable liquids and solids (e.g., nail polish, cosmetics, lighter fluid, shoe polish); oxidizers (toilet tablets, hydrogen peroxide, hair dye); corrosives (drain cleaners, antifreeze); toxic items (toilet cleaners, pesticides); pharmaceuticals (OTC drugs, smoking cessation aids); and universal wastes (batteries, light bulbs). Quantities vary, but are generally small.

Many of these items fall under the current ORM-D exception and are treated as such. However, with the phasing out of ORM-D hazard class (see Docket PHMSA-2009-0126), FMI member companies are concerned about the future shipment of these items in the reverse logistics supply chain, should they fail to meet the limited quantity exception in part 173. Limiting the burden on items shipped in the reverse logistics supply chain may go a long way to alleviating these concerns.

- **What is the volume of returns? Is there a "rule of thumb" metric – e.g., 10% of retail sales are returned? (PHMSA Question 2)**

FMI member companies estimate that the volume of returns ranges from one-half percent to two percent (0.5% - 2.0%) of total volume. To our knowledge, there is no widely accepted "rule of thumb" metric.

- **Are returns directed to a disposal facility of the original manufacturer? (PHMSA Question 3)**

Returns are directed to the manufacturer, supplier, supplier-designate or disposal facility depending on the situation. Saleable returns may be sold to salvage dealers.

- **Should returns be the responsibility of the manufacturer? (PHMSA Question 4)**

FMI believes that the manufacturer is in the best position to transport and dispose of products that include hazardous materials which are recalled, expired, or damaged and should bear the burden of proper transportation and disposal of such items. While FMI member companies sell an enormous variety of products (from food to pharmaceuticals to cleaning supplies, etc.), manufacturers make only a limited number of products and, therefore, are better situated to efficiently and properly transport and dispose of such products when necessary. Wholesalers may also play a role in working with manufacturers to coordinate retrieval of returned product.

- **To what extent should retail employees who package hazardous materials for shipments back to the distribution centers be subject to the training requirements in 49 CFR part 172, subpart H? Are retail employees currently being trained for the shipment of hazardous materials under 49 CFR part 172, subpart H? (PHMSA Question 5)**

Many of FMI's large member companies do provide training specified by 49 CFR part 172, subpart H to employees handling hazardous materials shipments. Any training required under the HMR regulations specifically relating to reverse logistics should take into account the small quantities of hazardous materials and minimal danger to public health and safety. For many of FMI's smaller member companies, any additional training requirements would be a significant financial burden.

- **Should hazard classes/divisions be excluded when considering regulations for "reverse logistics"? If so, why? (PHMSA Question 7)**

No matter which hazard classes/divisions are ultimately excluded from any reverse logistics regulations, FMI believes that including an exception for small quantities is important. Because the quantity of hazardous materials in unsaleables is generally small and the potential danger to public health and safety minimal, a regulatory exclusion for small quantities is justified.

- **Should PHMSA define specification packages for materials shipped under "reverse logistics"? If so, why? (PHMSA Question 8)**

FMI member companies would prefer to see general guidelines for the packaging of hazardous materials shipped in the reverse logistics supply chain rather than strict specifications. Leaving some room for flexibility here will permit retailers and wholesalers to package these materials according to the quantity, method of shipment, and other applicable circumstances, while ensuring safety.

- **What role(s) do 3<sup>rd</sup> party logistics providers play in the reverse logistics process, if any? (PHMSA Question 11)**

For FMI's member companies, third party logistics providers play a significant role in transporting hazardous waste in the reverse logistics supply chain. These companies provide services related to expired, recalled, damaged or overstocked product returns for retailers, as well as retrieving recalled product from retail and providing direct return services for wholesalers and manufacturers. Third party logistics providers can be instrumental in formulating and implementing a hazardous waste disposal system for retailers and wholesalers.

- **Should PHMSA define "reverse logistics"? If so, to what extent should PHMSA define types of shipments that would receive a relaxation under the HRM for "reverse logistics" shipments? (PHMSA Question 15)**

Yes, PHMSA should define the term "reverse logistics". Due to the small quantities and minimal danger to public health and safety, HMR requirements should be relaxed for shipments that fall under the "reverse logistics" definition.

- **Information and supporting data related to the potential costs of modifying the existing regulatory requirements pursuant to FMI's suggestions.**

FMI would expect that any modifications to the existing regulations to reduce the regulatory burden for firms who ship consumer products containing hazardous materials in the "reverse logistics" supply chain to result in a decrease in overall compliance costs by FMI member companies. Compliance with the current HMR with respect to reverse logistics shipments is particularly expensive for small businesses which tend to generate small quantities of unsaleable consumer products containing hazardous materials. A reduced regulatory burden and compliance cost savings would be a welcome change for all retailers, and is especially valuable for FMI's small member companies. Further, any reduction in compliance costs will benefit consumers to the extent that such costs are passed on to them by retailers.

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Once again, FMI appreciates the opportunity to comment in this docket and your consideration of these comments. If you have any questions or would like additional information please contact me at [elieberman@fmi.org](mailto:elieberman@fmi.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Erik R. Lieberman". The signature is fluid and cursive, with the first name "Erik" being the most prominent.

Erik R. Lieberman  
Regulatory Counsel