

# With the stroke of a pen: Changes in interpretations



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# NAICS – SIC Codes



- The Standard Industrial Classification (abbreviated **SIC**) is a United States government system for classifying industries by a four-digit code. Established in 1937, it is being supplanted by the six-digit North American Industry Classification System (NAICS code), which was released in 1997; however certain government departments and agencies, such as the U.S. Securities and Exchange Commission (SEC), still use the SIC codes.

# NAICS - Retail

- **Retail and Wholesale Trade**

NAICS redefines the boundaries between Retail and Wholesale Trade. The new NAICS definition emphasizes what the establishment does, rather than to whom it sells. Retailers are defined as those establishments that sell merchandise, generally without transformation, and attract customers using methods such as advertising, point-of-sale location, and display of merchandise. A store retailer has a selling place open to the public; merchandise on display or available through sales clerks; facilities for making cash or credit card transactions; and services provided to retail customers.

# NAICS - Wholesale



- **Retail and Wholesale Trade**

Wholesale establishments, on the other hand, are primarily engaged in selling or arranging the purchase or sale of: (a) goods for resale, (b) capital or durable nonconsumer goods, and (c) raw and intermediate materials and supplies used in production.

Wholesalers normally operate from a warehouse or office and are characterized by having little or no display of merchandise. In addition, neither the design nor the location of the premises is intended to solicit walk-in traffic. Wholesalers also do not normally use advertising directed to the general public.

# NAICS - Retail



- This industry comprises establishments primarily engaged in the merchant wholesale distribution of farm supplies, such as animal feeds, fertilizers, agricultural chemicals, pesticides, plant seeds, and plant bulbs.
- 4249 - Miscellaneous Nondurable Goods Merchant Wholesalers
- 424940 - Miscellaneous Nondurable Goods Merchant Wholesalers
- Agricultural limestone merchant wholesalers
- Ammonia, fertilizer material, merchant wholesalers
- Chemicals, agricultural, merchant wholesalers
- Fertilizer and fertilizer materials merchant wholesalers

# NAICS - Manufacturing



- Manufacturing pesticides, fertilizers, and other agricultural chemicals are classified in Industry Group 3253
- **3253 - Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing**
  - 32531 Fertilizer Manufacturing
    - 325311 Nitrogenous Fertilizer Manufacturing
    - 325312 Phosphatic Fertilizer Manufacturing
    - 325314 Fertilizer (Mixing Only) Manufacturing
  - 32532 Pesticide and Other Agricultural Chemical Manufacturing
    - 325320 Pesticide and Other Agricultural Chemical Manufacturing

# Regulatory Exemptions



- PSM – OSHA responded “Your covered process is exempt from PSM requirements based on the PSM retail exemption, 29 CFR 1910.119(a)(2)(i), as follows: ...you meet OSHA's retail exemption standard because you obtain more than half (>50%) of your income, i.e., 75%, from sales of NH<sub>3</sub> to direct end users - farmers.
- NPDES – EPA responded on October 3, 1991 “EPA agrees that incidental or small scale mixing and blending of fertilizers at wholesale or retail facilities does not constitute manufacturer blending

# Regulatory Exemptions



- EPCRA - Farmer Suppliers and Retailers
- **Q. Would a farm supplier or retail distributor be excluded from Sections 311 and 312 reporting based on the agricultural exemptions?**
- A. Under Section 311(e)(5), retailers are exempted from reporting requirements for fertilizers only. Therefore, substances sold as fertilizers would not need to be reported under Sections 311 and 312 by retail sellers. However, other agricultural chemicals, such as pesticides, would have to be reported under Sections 311 and 312 by the retail sellers.