

**In the matter of  
Wal-Mart Stores, Inc.**

ASSURANCE OF VOLUNTARY COMPLIANCE

BACKGROUND

WHEREAS, the undersigned Attorneys General believe that underage access to tobacco products constitutes a severe and continuing threat to public health and that:

- more than 80% of regular adult smokers began smoking before the age of eighteen;
- every day in the United States more than 2,000 persons under the age of eighteen begin smoking cigarettes, and one third of those persons will one day die from a tobacco-related disease;
- it has been shown that the younger a person begins smoking, the more likely it is that he or she will be unable to quit in later life and will suffer a disease attributable to tobacco use;
- recent studies indicate that youth demonstrate signs of addiction after smoking only a few cigarettes;
- the federal Food & Drug Administration (“FDA”) indicates that, as an average among U.S. retailers, one in every four attempts by a person 15 to 17 years old to purchase cigarettes over the counter results in a sale;
- an estimated 690 million packs of cigarettes are sold illegally to persons under the legal age to buy cigarettes each year nationwide;
- more than 400,000 Americans die each year from diseases caused by tobacco use;

WHEREAS, Wal-Mart Stores, Inc., operating under the Wal-Mart, SAM’S CLUB or Neighborhood Markets trademarks (hereafter referred to collectively as “Wal-Mart”) believes its tobacco-product sales and marketing policies and programs to be in compliance with all applicable laws and regulations, but nevertheless is committed to doing more to demonstrate its continuing commitment to responsible marketing of this age-restricted product and to the health and welfare of our nation’s youth and is therefore stepping forward to adopt additional safeguards designed to prevent youth access to tobacco products;

WHEREAS, the parties to this Assurance of Voluntary Compliance believe that the provisions herein constitute a good-faith effort to address the important issue of access to tobacco products by underage persons;

THEREFORE, Wal-Mart and the undersigned Attorneys General agree to enter into the following Assurance of Voluntary Compliance (“Assurance”) on the terms set forth below.

## AGREEMENT

1. This Assurance is entered into by the Attorneys General of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming (collectively “the Attorneys General”)<sup>1</sup> on behalf of their respective states and commonwealths (collectively “the States” and individually a “State”) and Wal-Mart. The provisions of this Assurance shall apply solely in the above-referenced States and shall be enforceable solely by Wal-Mart and by the Attorneys General of the above-referenced States.

2. This Assurance follows an analysis of compliance check data collected by the FDA, by state authorities under state laws and the Synar Amendment, section 1926 (b)(2) Public Health Service Act [42 USC § 300x-26(b)(2)] 1992, and by localities. Such data indicate that retail stores, including Wal-Mart stores, made sales of tobacco products to persons under the age of 18 in controlled compliance checks. The Attorneys General claim that such sales, and/or the corporate policies and practices that result in such sales, violate the Consumer Protection statutes of their respective States. Wal-Mart disagrees and believes that it sells tobacco products in full compliance with applicable laws and regulations.

3. Wal-Mart is a publicly held corporation, with its principal place of business in Bentonville, Arkansas. Wal-Mart operates retail stores (hereafter “stores,” a term that includes all Wal-Mart stores, Supercenters, SAM’S CLUBS, and Neighborhood Markets), some of which sell, among other things, tobacco products.

4. Wal-Mart has expressed its commitment to employing tobacco-retailing practices that are designed to prevent the sale of tobacco products to underage persons. Without admitting liability for or commission of any of the unlawful acts or practices described or referred to herein, Wal-Mart voluntarily agrees to enter into this Assurance, which shall be binding on Wal-Mart, and on any of its subsidiaries, successors and assigns that sells tobacco products at retail.

5. The parties reserve the right to discuss in good faith the viability of any or all of these provisions, having due regard for changes in laws and regulations, as well as changes in equipment, technology, or methodology of retail sales over time. To the extent that unlawful sales of tobacco products to underage persons occur at Wal-Mart stores in spite of Wal-Mart’s compliance with the provisions of this Assurance, the States expressly reserve any and all enforcement options available for addressing such unlawful sales, including without limitation the right to renew discussions with Wal-Mart for the purpose of establishing additional and/or different practices, policies, or procedures designed to eliminate or further reduce such sales. Any modifications to this Assurance shall be by written agreement between Wal-Mart and the Attorney(s) General of the affected State or States.

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<sup>1</sup> Of the states and commonwealths listed, Georgia is not represented by its Attorney General, but by the Administrator of Fair Business Practices Act. The term “Attorneys General” as used herein, as it pertains to Georgia, refers to the Administrator of the Fair Business Practices Act. With regard to Virginia, this document will be titled an “Agreement.”

6. The Attorneys General hereby release and forever discharge, on behalf of their respective States, Wal-Mart, any of Wal-Mart's subsidiaries, successors and assigns that sells or has sold tobacco products at retail, and their respective officers, employees, directors, attorneys, successors, assigns, principals, and agents from any and all non-criminal claims and causes of action that the Attorneys General may have that may arise under or be based upon the laws referred to in footnote 2 hereof<sup>2</sup> relating to any actual or alleged sales of tobacco products to underage persons occurring prior to September 30, 2003. Nothing herein shall affect other remedies available to any state or local jurisdiction in the States in connection with an alleged past or future sale of tobacco products to an underage person at a particular retail location. The Attorneys General shall inform all other state agencies that have jurisdiction to enforce laws concerning the sale of tobacco products to underage persons, and all governmental agencies in the States that may assert a claim or cause of action arising under or based upon the laws referred to in footnote 2 hereof, that Wal-Mart has entered into this Assurance. Prior to seeking to enforce this Assurance, an Attorney General shall contact the person designated by Wal-Mart pursuant to Section III.D, below, to attempt to resolve the State's concerns. Failing resolution, the Attorneys General agree to provide Wal-Mart thirty (30) days advance written notice prior to instituting any proceeding alleging a violation of this Assurance. The Attorneys General agree not to file an action alleging a violation of this Assurance based on isolated, inadvertent errors in complying with this Assurance. No Attorney General shall bring an action asserting a violation of this Assurance based on alleged acts or failures to act that occur or are alleged to occur solely in a store or stores located outside that Attorney General's State.

7. This Assurance may be executed in counterparts.

8. No provision of this Assurance is intended or shall be interpreted to authorize or require conduct in violation of applicable local, state or federal law.

9. Wal-Mart hereby represents that it has previously adopted and implemented many of the tobacco retailing practices set forth in this Assurance. Wal-Mart knowingly and voluntarily agrees to continue to adhere to, or, where it has not yet done so, to adopt and to implement, the tobacco retailing practices set forth in this Assurance. These practices relate to

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<sup>2</sup> §13A-12-3, Code of Alabama (1975); A.R.S. § 44-1521 et seq. (AZ); Arkansas Code Annotated 4-88-101 et seq.; Cal. Bus. & Prof. Code § 17200 et seq. (CA); Colorado Consumer Protection Act, §§ 6-1-101, et seq., C.R.S. (2001); Conn. Gen. Stat. § 42-110a et seq. (2003) (CT); 6 Del. C. 2512 et seq. and 6 Del. C. 2531 et seq. (DE); Fla. Stat. Ann. §501.201 (West) (FL); O.C.G.A. 10-1-390 et seq. of the Fair Business Practices Act (GA); Haw. Rev. Stat. § 481A-1 et seq. (HI); Idaho Code Section 48-601 et seq.; Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 et seq.; Iowa Code § 714.16 (2003); K.S.A. 50-623, et seq. (KS); KRS 367.110-367.300 (KY); La. Rev. Stat. Ann. §51:1501 (West) (LA); Me. Rev. Stat. Ann. tit. 5 § 206 et seq. and tit. 10 § 1211 (ME); Maryland Annotated Code, Commercial Law Article, §§13-101 et seq.; M.G.L. c. 93A (MA); Michigan Consumer Protection Act, MCL 445.901 et seq.; Minn. Stat. s. 325F.68-.69 (prevention of consumer fraud) and s. 325D.43-.48 (2000) (MN); Miss. Code Ann. §75-24-1 (MS); Mont. Code Ann. § 30-14-101 et seq. (MT); Uniform Deceptive Trade Practices Act, Neb.Rev.Stat. § 87-301 et seq. (Reissue 1999) and Consumer Protection Act, Neb.Rev.Stat. § 59-1601 et seq. (Reissue 1998) (NE); Nevada Revised Statutes Chapter 598; NH Rev.Stat. Ann. 358-A (1995 Michie Butterworth, and Supp. 2001 West) (NH); N.J.S.A. 56:8-1 et seq. (NJ); NMSA 1978, §§ 57-12-1 et seq. (NM); New York Executive Law §63(12) and General Business Law Article 22-A; R.C. 1345.01 et seq. (OH); 15 O. S. (2001) § 751 et seq. (OK); ORS 646.605, et seq. (OR); R.I. General Laws §§ 11-9-13, 11-9-13.1 through 11-9-13.16, and 11-9-14 (RI); S.C. Code Ann., § 39-5-10 et seq. (1976, as amended) (SC); S.D. Codified Laws Ann. Chapter 37-24 (SD); Tenn. Code Ann. §47-18-101 et seq. (TN); Tex. Bus. & Com. Code Ann. §17-41 (Vernon) (TX); Utah Code Ann. §§13-5-1 through 13-5-18 & 13-11-1 through 13-11-23; Virginia Consumer Protection Act, Va. Code § 59.1-196 et seq.; Wash. Rev. Code Ann. § 19.86.020 (WA); W. VA Code 46A-1-101 et seq. (WV); Wis. Stat. § 100.18(1) (WI); Wyo. Stat. § 40-12-101 et seq. (WY).

efforts to prevent persons under legal age from having access to and using tobacco products. Although tobacco products are not the only items to which youth access is restricted, the term “youth access” is used herein to refer only to the sale of tobacco products to persons under the legal age to purchase tobacco products in the particular State. The term “tobacco products” as used herein is intended to include cigarettes (including bidis), cigars, loose tobacco, chewing tobacco, and snuff. The term “underage” as used herein means under the legal age to purchase tobacco products in the particular State.

10. This Assurance shall not be effective or considered executed until September 30, 2003, by which date the signatures of Wal-Mart and the Attorneys General shall have been affixed. In the event that all such signatures are not affixed by such date, then this Assurance shall be null and void and without effect. The “Effective Date” (as that term is used in this Assurance) shall be November 24, 2003.

## **I.**

### **Personnel Policies Relating to the Sale of Tobacco Products to Underage Persons**

Except as expressly provided below, Wal-Mart shall commence implementation of the following personnel policies relating to youth access within sixty (60) days after the Effective Date, and shall complete implementation as soon as circumstances permit, but in any event no later than one-hundred fifty (150) days after the Effective Date:

#### **A. Hiring and Employment**

1. Wal-Mart shall attempt to minimize the use of underage persons in retail sales positions that may involve the sale of tobacco products, and Wal-Mart shall closely supervise any such persons. Wal-Mart shall also attempt to minimize the use of underage persons as supervisors of employees in retail sales positions that may involve the sale of tobacco products.

2. In jurisdictions (within the States) that have laws that prohibit the use of underage persons in retail sales positions that may involve the sale of tobacco products, Wal-Mart shall, in addition to its other efforts to comply with such laws, either (a) use cash registers in positions where retail sales of tobacco products may occur that (i) ascertain the age of the specific employee who intends to use the register at the beginning of the employee’s shift, and (ii) if the employee is underage, render that employee unable to use the register for tobacco-product retail sales purposes; or (b) use a different device, method or procedure (or combination of devices, methods and procedures) in positions where retail sales of tobacco products may occur that shall provide assurance greater than or equal to the assurance provided by clause (a) above that an underage employee shall not be able to complete a retail sale of a tobacco product without assistance from an employee who is not underage. If Wal-Mart proceeds under clause (b) above it shall provide written notice within fifteen (15) business days thereafter that it has done so to the Attorney General in each directly affected State, accompanied by a description of the different devices, methods or procedures (or combination thereof) employed and a statement of the basis upon which Wal-Mart believes that such different devices, methods or procedures provide the assurance required by clause (b). Wal-Mart agrees that, in any action brought by an Attorney General challenging the adequacy of the assurance provided by the devices, methods, or procedures implemented by Wal-Mart pursuant to clause (b) above, Wal-Mart shall not assert in defense of such challenge the fact that, during the period prior to the date sixty (60) days after the date that it provided the required notice, Wal-Mart had already incurred, or become legally

obligated to incur, costs in connection with the adoption of those devices, methods, or procedures. Wal-Mart further agrees that, in any such action brought by an Attorney General prior to the date sixty (60) days after the date that Wal-Mart provided the required notice, Wal-Mart shall not assert in defense of such challenge the fact that Wal-Mart would have to incur costs or disrupt operations to restore the devices, methods, or procedures that were used immediately prior to the devices, methods, or procedures the adequacy of which the Attorney General's action challenges.

3. Upon hiring an employee for a position (or upon first assigning an employee to a position) the duties of which include the direct sale of tobacco products to retail customers, Wal-Mart shall orally inform that employee of the importance of compliance with laws relating to youth access, and that severe consequences, including termination, may result from the employee's failure to comply with these policies. Wal-Mart shall also orally inform any employee who works at a store and who supervises another employee whose duties include the direct sale of tobacco products to retail customers in that same store of the importance of compliance with laws relating to youth access. Before any employee assumes a position the duties of which include the direct sale of tobacco products to retail customers, Wal-Mart shall provide that employee information in written or electronic form that shall include the content of Sections I.B.1.c, d, and e below and references to company policies and legal consequences associated with youth access, and that shall inform the employee that: (a) the employee's compliance with youth access laws and policies will be taken into account in connection with promotion and retention decisions; and (b) Wal-Mart monitors employee compliance with youth access laws and policies. Wal-Mart shall obtain a written or electronic acknowledgment that each such employee has read and understands the information provided.

## B. Training

1. Each employee who, after the Effective Date, is initially assigned to a job position the duties of which include the direct sale of tobacco products to retail customers, or to a job position in a store the duties of which include the supervision of another employee in that same store whose duties include the direct sale of tobacco products to retail customers, shall, within ten (10) working days after being assigned to such position, receive the training related to tobacco products set forth in subsections (a) through (h) below. Each employee who, as of the Effective Date, is currently assigned to a job position described in the first sentence of this Section I.B shall, within six (6) months after the Effective Date, receive the training related to tobacco products set forth in subsections (a) through (h) below. Such training shall be performed by a competent person, or if conducted electronically, shall be overseen by a competent person, and shall be comprised of the following elements:

- (a) A review of all Wal-Mart policies relating to youth access, which policies have taken into account all applicable federal, state, and local laws relating to youth access.
- (b) A brief explanation of health-related reasons for laws that restrict youth access, including communication of the items related to the use of tobacco products listed in the initial Whereas clause of this Assurance, and the fact that there is consensus in the public health community with respect to these items.

- (c) A review of the range of tobacco products sold by Wal-Mart to which Wal-Mart's youth access policies apply.
- (d) Instruction that an employee must decline to sell a tobacco product if the circumstances reasonably suggest that doing so would violate the laws or company policies regarding youth access.
- (e) A review of the applicable law and company policies and procedures relating to requiring identification, including: (i) the age that triggers the identification requirement; (ii) acceptable forms of identification; and (iii) features of a form of identification that must be checked, with particular emphasis on the government-issued forms of identification most commonly used in the local area, including the driver's license issued in the particular State.
- (f) A review of prescribed methods and practical techniques (where appropriate) associated with situations which may present special challenges in declining to sell tobacco products to underage persons, for example, "third party" sales, customer pressure, and sales to persons who are friends, acquaintances, and/or peer group members.
- (g) An explanation of the fact that many illegal sales are made to underage persons who produce identification showing that they are in fact underage, and the importance of devoting the time and effort needed to establish that a customer is not underage.
- (h) Testing that provides reasonable assurance that the employee has knowledge and understanding of Wal-Mart's policies related to youth access, including those listed in Sections V.A.1 through V.A.8 below, to the extent that those policies are in effect at the time of testing.

Wal-Mart shall continually review and address any weaknesses identified in the training process.

2. Wal-Mart shall provide all employees who directly sell tobacco products to retail customers or who work in a store and supervise employees in that same store who directly sell tobacco products to retail customers additional training periodically to ensure that they maintain the requisite knowledge, skill, and motivation. Such additional training shall include a review of Wal-Mart's policies on youth access and, with respect to training for the supervisors described in this Section I.B.2, an updated review of performance (as measured pursuant to Section III.B or III.C hereof and as reflected in compliance checks performed by law enforcement entities) by Wal-Mart and the particular store.

3. In the event a retail employee sells a tobacco product to an underage person in violation of federal, state or local law, or fails to pass an internal or external performance check conducted pursuant to Section III.B or C, below, and if Wal-Mart desires to retain the employee, Wal-Mart shall provide additional training as soon as possible and within no more than thirty (30) days after Wal-Mart's receipt of notice of such violation or failure. Each such employee shall sign an acknowledgment in writing or electronically that he or she has read and understands Wal-Mart's youth access policies and any other information provided pursuant to the training described in this Section I.B.3.

## II. Support Tools

A. Wal-Mart states that it presently uses registers in all its stores that (1) prompt the cashier to obtain and check identification when a retail customer attempts to purchase a tobacco product, (2) inform the cashier of the date on or before which the customer must have been born to legally purchase tobacco products in that state, and (3) require the cashier to (a) enter the birthdate from the identification to determine the age of the customer (and if such customer is thereby determined by the register to be underage, the register shall prohibit the transaction), or (b) confirm that the customer's birthdate as it appears on the identification establishes that the customer is not underage, or (c) confirm that the customer appears to be at least 27 years old (or such higher age as Wal-Mart in its sole discretion determines appropriate for its stores). In all stores where tobacco products are sold, Wal-Mart shall either (1) maintain this type of register, or (2) use a different device, method or procedure (or combination of devices, methods, and procedures) that shall provide assurance greater than or equal to the assurance provided by clause (1) immediately above that the customer attempting to purchase a tobacco product is not underage. If Wal-Mart proceeds under clause (2) immediately above it shall provide written notice within fifteen (15) business days thereafter that it has done so to the Attorney General in each directly affected State, accompanied by a description of the different devices, methods or procedures (or combination thereof) employed and a statement of the basis upon which Wal-Mart believes that such different devices, methods, or procedures provide the assurance required by clause (2). Wal-Mart agrees that, in any action brought by an Attorney General challenging the adequacy of the assurance provided by the devices, methods, or procedures implemented by Wal-Mart pursuant to clause (2) above, Wal-Mart shall not assert in defense of such challenge the fact that, during the period prior to the date sixty (60) days after the date that it provided the required notice, Wal-Mart had already incurred, or become legally obligated to incur, costs in connection with the adoption of those devices, methods, or procedures. Wal-Mart further agrees that, in any such action brought by an Attorney General prior to the date sixty (60) days after the date that Wal-Mart provided the required notice, Wal-Mart shall not assert in defense of such challenge the fact that Wal-Mart would have to incur costs or disrupt operations to restore the devices, methods, or procedures that were used immediately prior to the devices, methods, or procedures the adequacy of which the Attorney General's action challenges. Nothing in this Assurance requires or sanctions practices that involve the retention of information identifying individual purchasers.

B. To the extent reasonable and practicable, Wal-Mart shall, beginning 120 days after the Effective Date, as part of its periodic evaluation of cashiers: (1) collect data that is capable of being stored electronically by cash registers, identification verification systems and/or comparable electronic devices that Wal-Mart otherwise uses in connection with the direct sale of tobacco products to retail customers; (2) use this data to calculate the average time between when a tobacco product is presented for retail sale and when the cashier who is being evaluated either approves or refuses the sale of that item; and (3) use this calculation to evaluate that cashier's performance by assessing whether the cashier is taking the time reasonably required to verify the age of customers seeking to purchase tobacco products, *i.e.*, a time period during which the cashier must (a) where required pursuant to this Assurance, ascertain whether the customer appears to be at least 27 years old (or such higher age as Wal-Mart in its sole discretion determines appropriate for its stores), (b) where consistent with Section II.A, above, either obtain and check a form of customer identification permitted to be used for such purpose pursuant to

this Assurance or enter the birthdate of the customer, and (c) complete or refuse to complete the sale as permitted or required by this Assurance.

C. In addition to meeting whatever signage and posting requirements or restrictions may be embodied in local, state or federal law, Wal-Mart shall, within sixty (60) days after the Effective Date, post signs in stores where tobacco products are sold no smaller than 48 square inches that clearly indicate that a person must be 18 (or other applicable legal age, if other than 18) to buy tobacco products and that identification is checked for all persons appearing to be under the age of 27 (or such higher age as Wal-Mart in its sole discretion determines appropriate for its stores). Such signs shall be posted (1) on or adjacent to each of the doors by which a customer may enter the establishment (facing out and such that the bottom edge of the sign is at a height not less than 42 inches above the floor and the top edge of the sign is not more than 72 inches above the floor), and (2) at each register where tobacco products are sold.

### **III.**

#### **Self-Monitoring and Other Measures to Ensure Compliance**

##### **A. Supervision and Accountability**

1. During performance evaluations occurring more than six (6) months after the Effective Date of each cashier whose duties include the direct sale of tobacco products to retail customers, Wal-Mart shall evaluate such cashier's compliance with all company procedures designed to prevent purchases of tobacco products by underage persons, to the extent, if any, that there then exists available information specific to such cashier based upon internal performance checks, external performance checks, law-enforcement compliance checks, supervisory reports, customer complaints, and a current review of performance pursuant to Section II.B, above.

2. To the extent that Wal-Mart evaluates a cashier based in part upon the rate at which that cashier scans or otherwise transacts items per hour, Wal-Mart, beginning no later than six (6) months after the Effective Date, (a) shall not weigh that cashier's items-per-hour rate as a positive factor in any evaluation of the cashier if information about that cashier available from other sources (including internal performance checks, external performance checks, law-enforcement compliance checks, supervisory reports, customer complaints, and assessments conducted pursuant to Section II.B, above) reasonably demonstrates that the cashier has, during the period since the cashier's last evaluation, failed to comply with Wal-Mart's policies regarding youth access (including, but not limited to, the policies set forth in this Assurance); and (b) shall, to the extent reasonable and practicable and based upon relevant, available information, take into consideration that cashier's proper compliance with Wal-Mart's policies regarding youth access in assessing that cashier's items-per-hour rate, including whether such rate has been reduced as a result of such compliance (in which case such rate shall not, to the extent the amount of such reduction can reasonably be attributed to such compliance, be weighed as a negative factor in that cashier's evaluation).

3. Beginning on the Effective Date, Wal-Mart shall instruct its store managers and assistant managers within fifteen (15) days after their first assuming responsibility for managing employees who directly sell tobacco products to retail customers (or within 15 days after the Effective Date for such managers who first assume such responsibility before the Effective Date) that their responsibilities include the monitoring and supervision of staff compliance with youth access laws and policies on an ongoing basis, and shall inform such managers that instances of



compliance and non-compliance with youth access laws and policies on the part of those supervised will be given consideration in connection with future employment decisions regarding that manager.

4. Wal-Mart shall, within sixty (60) days after the Effective Date, implement a policy requiring each store manager to report in writing or electronically each alleged violation of law concerning the sale of tobacco products to underage persons occurring at the store to the person designated pursuant to Section III.D, below, within three (3) business days after receipt of notice of the alleged violation. Wal-Mart's corporate office shall maintain a record of all reported alleged violations and their dispositions for three (3) years.

#### B. Internal Performance Checks

Beginning on the Effective Date, Wal-Mart shall implement and, as long as it sells tobacco products at retail in any State, maintain a program of internal performance checks in the States designed to assist Wal-Mart in determining whether stores and staff are in compliance with youth access laws and policies. This program shall at minimum have the following features:

1. Wal-Mart shall conduct at least 3 internal performance checks at varying or random times of the day at each store that has either received notice from a law enforcement agency of an alleged violation of law concerning the sale of tobacco products to underage persons that occurred after the Effective Date, or has failed an external performance check conducted as provided in Section III.C, below. Internal performance checks conducted pursuant to this Section III.B.1 shall include at least two checks of the individual employee who was the subject of the previous alleged violation or who failed the external performance check, as the case may be, unless Wal-Mart has terminated that employee. Wal-Mart shall begin performing the checks described in this Section III.B.1 within forty-five (45) days after Wal-Mart's corporate office first receives written or electronic notice of the alleged violation or failure. Internal performance checks conducted pursuant to this Section III.B.1 shall be carried out in the manner described in Section III.B.2, below. The results of internal performance checks conducted pursuant to this Section III.B.1 shall not be included in the calculation of the Success Rate of an External Program.

2. An "internal performance check" shall consist of one attempted purchase of a tobacco product. Internal performance checks shall be discreet and utilize procedures necessary to ensure that those whose performance is being checked (both employees and managers responsible for the performance of the employees) have no reason to know that a given attempt to purchase a tobacco product is a performance check. An internal performance check shall either: (a) where it is legal to do so, use a person who is under the legal age to buy tobacco products but who will attain such legal age within one calendar year of the date of the check in order to test both whether identification is being requested as required and whether sales are made in spite of the presentation of an acceptable form of identification (see Section V.A.8, below) accurately showing the tester's age; or (b) use a person of legal age to buy tobacco products who is within the age range requiring that he or she be asked to produce identification in order to test whether identification is requested as required by store policy and this Assurance. The check shall test (and success of the check shall be determined based upon) whether the employee selling the tobacco product asked the purchaser to produce identification, whether the

employee checked the identification to verify both that the purchaser is of legal age and that the identification provided by the purchaser is an acceptable form (see Section V.A.8, below), and, in the case of an attempted purchase by a person under legal age to buy tobacco products, whether the sale was consummated. At Wal-Mart's sole discretion, internal performance checks may be performed by Wal-Mart employees, outside contractors, or any combination thereof.

3. In the event of a failed internal performance check for an employee whom Wal-Mart desires to retain, the store manager or assistant manager shall inform the employee of the test result, instruct the employee on what constitutes proper performance, and caution the employee to avoid further instances of noncompliance with youth access laws. In addition, the store manager or assistant store manager shall, within three (3) business days after receipt of the test result, inform the person designated pursuant to Section III.D, below, of such failed internal performance check. Wal-Mart shall also take whatever other action the company deems necessary to ensure future compliance.

4. Wal-Mart shall inform the employee who passes an internal performance check and his or her store manager of the successful internal performance check.

5. The Attorneys General agree not to institute legal proceedings based on any sales of tobacco products that are made during internal performance checks conducted pursuant to this Assurance.

### C. External Performance Checks

In addition to conducting the internal performance checks described above, Wal-Mart shall select and retain, at Wal-Mart's expense, an independent entity reasonably acceptable to the Attorneys General to conduct external performance checks. This independent entity shall conduct external performance checks as follows:

1. External performance checks shall be conducted pursuant to a series of consecutive six-month External Programs, with each subsequent External Program beginning on the day after the previous External Program ends (unless, as provided in Section III.C.3, below, external performance checks are no longer required).

2. The first External Program shall commence within ninety (90) days after the Effective Date, unless Wal-Mart is unable, in spite of diligent efforts to do so, to locate and complete an agreement with an entity to conduct the checks in the manner provided herein, in which case such External Program shall commence as soon thereafter as circumstances permit, but in any event no later than one-hundred fifty (150) days after the Effective Date. During each six-month External Program external performance checks shall be conducted at 325 stores within the States, such stores to be selected at random by the independent entity, with one external performance check conducted at each selected store.

3. At the completion of each six-month External Program, Wal-Mart shall calculate that External Program's Success Rate, which is defined for these purposes as the percentage of external performance checks conducted during that six-month External Program (not including any re-checks) that were successful. An external performance check shall be considered successful for these purposes if, pursuant to that external performance check, an attempt to purchase a tobacco product occurs but the purchase of the tobacco product is not completed.

While Wal-Mart's goal regarding the sale of tobacco products is to eliminate all sales to underage persons, for the purposes of an External Program Wal-Mart's progress shall be measured by whether its Success Rate with respect to that External Program equals or exceeds 90%. In the event that Wal-Mart's Success Rate for all of any four (4) consecutive External Programs occurring after the completion of the initial six (6) such Programs is 90% or higher, then external performance checks shall not be required thereafter. In addition, external performance checks shall not be required during any period in which there is no State in which Wal-Mart is selling tobacco products at retail. At its sole discretion, Wal-Mart may continue to conduct external performance checks at Wal-Mart's expense during any period when external performance checks are not required by this Assurance, and checks so conducted shall be subject to the provisions of Sections III.C.4 through III.C.8 of this Assurance.

4. An "external performance check" shall consist of one attempted purchase of a tobacco product. External performance checks shall be conducted by the independent entity as set forth in the protocol attached hereto as Exhibit A. The independent entity shall be instructed to conduct external performance checks for the purpose of obtaining an accurate and reliable indication of actual store practices in connection with sales of tobacco products. No store selected to be checked will be identified to Wal-Mart, directly or indirectly, until after the check of that store is completed. In addition, external performance checks required under this Assurance shall be conducted as follows:

- (a) Upon the written request of an Attorney General, such request to be made to the person designated by Wal-Mart pursuant to Section III.D below at least thirty (30) days prior to the beginning of the first or a subsequent six-month External Program, external performance checks conducted in that Attorney General's State pursuant to the External Programs commencing thereafter shall (until further notice from that Attorney General) use a person who is under the legal age to buy tobacco products but who will attain such legal age within one calendar year of the date of the check; or
- (b) Where an Attorney General does not make the request referred to in subsection (a), or upon the written withdrawal of a request by an Attorney General referred to in subsection (a), external performance checks conducted in that Attorney General's State shall use a person of legal age to buy tobacco products who is within the age range specified by this Assurance (or such broader age range specified by Wal-Mart in its sole discretion) as requiring that he or she be asked to produce identification.

In the event that a store fails to perform successfully in an external performance check, Wal-Mart shall request that the independent entity conduct a second check ("re-check") of the store within three (3) months.

5. Results of these external performance checks, including re-checks, shall be made available within three (3) business days by the independent entity to the store managers and assistant store managers of the stores that have been checked and to the person designated pursuant to Section III.D, below. Within three (3) business days after receiving notice of an external performance check, Wal-Mart shall communicate the result of the check to the cashier who was the subject of the test. Further, Wal-Mart shall require by contract that the results of the

external performance checks be promptly reported by the independent entity to a person designated to receive such reports on behalf of the Attorneys General.

6. For purposes of retaining the independent entity to perform the external performance checks, Wal-Mart shall evaluate the performance of the entity on the competency of the entity's performance in obtaining an accurate and reliable indication of actual employee practices in connection with the sale of tobacco products to underage persons, rather than on the basis of whether the results were favorable.

7. Wal-Mart shall cooperate in providing access to the Attorneys General to information relating to the results of the external performance checks.

8. The Attorneys General agree not to institute legal proceedings based on any sales of tobacco products that are made during external performance checks conducted pursuant to this Assurance.

#### D. Youth Access Compliance Designee

As long as it continues to sell tobacco products, Wal-Mart shall designate a corporate-level employee to be responsible for monitoring compliance with the terms of this Assurance and, more generally, for overseeing efforts to comply with youth access laws, including collecting and reviewing reports of violations of laws concerning the sale of tobacco products to underage persons. Until Wal-Mart designates otherwise by written notice to the Attorneys General, such corporate-level employee shall be Ann Cato, Vice President of Compliance, Wal-Mart Stores, Inc.

### **IV. Employee-Assisted Sales**

A. Wal-Mart shall, within six (6) months after the Effective Date, display and store tobacco products and paraphernalia that are used exclusively in connection with the use of tobacco products either (1) in a format that requires an employee's assistance in retrieving the tobacco product or paraphernalia from a restricted-access location, or (2), if otherwise legal, in another manner using devices, methods, or procedures (or combination of devices, methods, and procedures) that shall provide assurance greater than or equal to the assurance provided by clause (1) above that an underage person shall not be able to obtain physical possession of any tobacco product or paraphernalia. In the event that Wal-Mart assigns responsibility for retrieving tobacco products or paraphernalia from the restricted-access location to a single position, then an underage person shall not be used in such position; otherwise, Wal-Mart shall attempt to minimize the use of underage persons as the employees who provide the assistance described in clause (1) above and Wal-Mart shall closely supervise any such persons. If Wal-Mart proceeds under clause (2) above it shall provide written notice within fifteen (15) business days thereafter that it has done so to the Attorney General in each directly affected State, accompanied by a description of the different devices, methods, or procedures (or combination thereof) employed and a statement of the basis upon which Wal-Mart believes that such different devices, methods or procedures provide the assurance required by clause (2). Wal-Mart agrees that, in any action brought by an Attorney General challenging the adequacy of the assurance provided by the devices, methods, or procedures implemented by Wal-Mart pursuant to clause (2) above, Wal-Mart shall not assert in defense of such challenge the fact that, during the period prior to the date

sixty (60) days after the date that it provided the required notice, Wal-Mart had already incurred, or become legally obligated to incur, costs in connection with the adoption of those devices, methods, or procedures. Wal-Mart further agrees that, in any such action brought by an Attorney General prior to the date sixty (60) days after the date that Wal-Mart provided the required notice, Wal-Mart shall not assert in defense of such challenge the fact that Wal-Mart would have to incur costs or disrupt operations to restore the devices, methods, or procedures that were used immediately prior to the devices, methods, or procedures the adequacy of which the Attorney General's action challenges. Wal-Mart hereby represents that it presently displays and stores tobacco products and such paraphernalia in the format described in clause (1) above in over 85% of its stores.

B. No vending machine shall be used to sell tobacco products or paraphernalia that are used exclusively in connection with the use of tobacco products unless the use of such vending machine is otherwise legal and a device, method, or procedure (or combination of devices, methods, and procedures) is used that provides assurance that an underage person shall not be able to obtain physical possession of any tobacco product or paraphernalia sold by such vending machine greater than or equal to the assurance provided by the format or manner described in Section IV.A.1 above. Wal-Mart's current policy is to not use vending machines to sell tobacco products or paraphernalia that are used exclusively in connection with the use of tobacco products. If Wal-Mart changes this policy, Wal-Mart shall, within fifteen (15) business days after it first uses such a vending machine, provide written notice that it has done so to the Attorney General in each directly affected State, accompanied by a description of the vending machine employed and a statement of the basis upon which Wal-Mart believes that the devices, methods, or procedures that Wal-Mart uses or intends to use provide the assurance required by the first sentence of this Section IV.B. Wal-Mart agrees that, in any action brought by an Attorney General challenging the adequacy of the assurance provided by the device, method, or procedure implemented by Wal-Mart pursuant to the first sentence of this Section IV.B, Wal-Mart shall not assert in defense of such challenge the fact that, during the period prior to the date sixty (60) days after the date it provided the required notice, Wal-Mart had already incurred, or become legally obligated to incur, costs in connection with the adoption of that device, method, or procedure. Wal-Mart further agrees that, in any such action brought by an Attorney General prior to the date sixty (60) days after the date that Wal-Mart provided the required notice, Wal-Mart shall not assert in defense of such challenge the fact that Wal-Mart would have to incur costs or disrupt operations to restore the devices, methods, or procedures that were used immediately prior to the devices, methods, or procedures the adequacy of which the Attorney General's action challenges.

## **V. Other Tobacco Policies**

### **A. Written Policies**

Beginning on the Effective Date, Wal-Mart's policies relating to the sale of tobacco products to underage persons shall be in written or electronic form. Within sixty (60) days after the Effective Date, or upon hiring if that occurs thereafter, Wal-Mart shall provide to each store employee (1) a copy in written or electronic form of all of the youth-access policies with which that employee must comply, and (2) copies in written or electronic form of all of the youth-access policies with which store employees in the same store who are supervised (either directly

or through an intermediate supervisor) by that employee must comply. Except with respect to Wal-Mart's policy to comply with state laws that forbid persons younger than a specified age from selling alcohol, Wal-Mart's policies intended to prevent sales of tobacco products to underage persons shall, beginning on the Effective Date, be no less stringent or comprehensive than policies intended to prevent sales of alcohol to persons too young to buy alcohol legally. It is understood that differences in the law may require differences in policy. Wal-Mart's policies shall, at minimum, conform to the standards and practices relating to personnel, support tools, self-monitoring, and employee-assisted sales set forth in this Assurance and shall also, beginning on the Effective Date, include the following:

1. A policy that no underage person is permitted to purchase cigarette papers, pipes, or other such paraphernalia that are used exclusively in connection with the use of tobacco products.

2. A policy that Wal-Mart will give comparable treatment to youth access to tobacco products as it gives to access to alcohol by persons too young to purchase alcohol legally in employee training and discipline, except where differences in the law require differences in policy.

3. A policy against increasing youth demand for tobacco products through in-store advertising. In-store advertising shall be located only at the place in the store at which the particular advertised tobacco products are displayed or sold, and shall be limited to brand names, logos, other trademarks, and pricing.

4. A policy against sales of single cigarettes or other modes of packaging cigarettes in packs with fewer than twenty (i.e., so-called "kiddie packs").

5. A policy against distribution of free samples of tobacco products on store property.

6. A policy requiring age verification (using a method permitted by Section V.A.8 of this Assurance) in connection with retail tobacco product purchases by persons who reasonably appear to be under age 27 or such higher age as Wal-Mart in its sole discretion determines appropriate for its stores.

7. A policy against the retail sale of non-tobacco products that are intended to look like tobacco products, such as bubble-gum cigars or candy cigarettes.

8. Unless a more accurate method of age verification is allowed by law, a policy that only currently valid photo-identification will be acceptable for purposes of establishing the legal age to purchase tobacco products at retail, and that only the following forms of identification shall be accepted: (a) Driver's License, (b) State-Issued Identification Card; (c) U.S. Passport; (d) Military Identification Card; and (e) U.S. Immigration Card.

#### B. Policies provided to Attorneys General

Wal-Mart shall provide a copy of the youth-access policies with which employees who directly sell tobacco products to retail customers must comply to a person or persons designated to receive such policies on behalf of the Attorneys General within sixty (60) days after the Effective Date, and thereafter shall provide copies of any material changes or modifications to

such policies to a person or persons designated by the Attorneys General to receive them within thirty (30) days after such change or modification.

C. Contribution

Wal-Mart agrees to pay, no later than October 3, 2003, the sum of \$437,500 to the States, made payable to such accounts and addresses as the Attorneys General may direct. This payment is made in settlement of the claims of the Attorneys General as set forth above, except that no part of the payment is made in settlement of an actual or potential liability for a fine, penalty, or enhanced damages or is the cost of a tangible or intangible asset or other future benefit. Such sum is to be divided by the States as they may agree, and is to be used by the individual States for attorneys fees or costs of investigation, or it shall be placed in or applied to consumer education, public protection, or local consumer aid funds, including for implementation of programs designed to decrease possession and use of tobacco by underage persons, or for any other purpose authorized by state law at the sole discretion of each State's Attorney General or as otherwise required by law.

Dated: September 30, 2003  
WAL-MART STORES, INC.

By: \_\_\_\_\_  
THOMAS M. COUGHLIN  
Vice Chairman, Wal-Mart Stores, Inc.

By: \_\_\_\_\_  
MARTIN G. GILBERT  
Vice President & Assistant Secretary, Wal-Mart Stores, Inc.  
General Counsel, Wal-Mart Stores Division

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## **Exhibit A: Protocol for External Performance Checks**

### 1. General Principles Underlying Protocol

a. External performance checks conducted pursuant to this protocol shall be carried out in a manner that is reasonably designed to provide a reliable and realistic assessment of how Wal-Mart employees perform when presented, in the usual course of business, with typical young persons attempting to purchase tobacco products.

b. Each external performance check is to be conducted in a manner that is reasonably designed not to reveal to Wal-Mart employees and managers in the store being checked that the attempted purchase of tobacco products is pursuant to an external performance check or that external performance checks are simultaneously occurring at Wal-Mart stores in the area of the store being checked.

c. Persons who attempt to purchase tobacco products during external performance checks (“checkers”) are to be trained by the independent entity as necessary to reasonably ensure that they are able to perform external performance checks in a competent and confident manner. Such training shall include role-plays.

d. To the extent that underage persons are used as checkers, reasonable measures shall be employed to ensure that such underage persons are not able to consume or distribute the tobacco products that they attempt to purchase during external performance checks. Written consent of a parent or guardian shall be obtained for each underage person used as a checker.

e. External performance checks are to be conducted in accordance with applicable federal, state, and local laws and regulations.

f. Unless otherwise defined in this Protocol, all terms used herein shall have the meanings given to them in the Assurance of Voluntary Compliance.

### 2. General Characteristics of Persons Employed as Checkers

a. The independent entity shall confirm that each checker, when he or she conducts external performance checks, is the age required under Section III.C.4 of the Assurance.

b. Each checker shall not appear to be older or younger than the average person of his or her age, shall dress in a manner reasonably appropriate to his or her age group, and shall not alter his or her appearance with the intent of appearing older or younger.

c. At least 40%, but not more than 60%, of external performance checks shall be conducted by a checker who is female.

d. Persons used as checkers may (but are not required to) include otherwise suitable persons who have previously used or currently use tobacco products.

### 3. Underage Checkers: Instructions to Checkers and Conduct of External Performance Checks

External performance checks in which the checker is an underage person shall be conducted as follows:

a. When the external performance check begins, the checker shall possess a state-issued photo-ID that accurately shows the checker's date of birth, shall possess no other form of ID, and shall possess a sum of money sufficient to pay for the cigarettes that the checker will attempt to purchase and, if applicable, for the food item that the checker will attempt to purchase.

b. At least 60% of external performance checks shall be conducted on weekends or between 3:00 P.M. and 8:00 P.M. on weekdays.

c. The checker shall be accompanied to the store that will be the subject of the external performance check by a person who is at least 21 years old, and that person reasonably shall supervise the checker as closely as circumstances permit without suggesting to store employees that the checker is accompanied.

d. The checker shall enter the store alone.

e. In at least 80%, but not more than 90%, of external performance checks, the checker shall select a food item, which shall consist of a soft drink, snack, or small food package (if individual beverages or snacks may not be purchased at a check-out counter where tobacco products may be purchased). The food item shall vary from one external performance check to another.

f. The checker shall approach a check-out counter where tobacco products may be purchased.

g. The checker shall request from the cashier a single pack of cigarettes (or the smallest package of cigarettes available if single packs of cigarettes are not sold at the store), and, if applicable, place the food item on the counter. The brand requested shall vary among external performance checks, and shall be chosen from a single list of five brands provided to Wal-Mart by the Attorneys General.

h. The checker shall place on the counter enough money to purchase the cigarettes requested and the food item, if applicable.

i. If the cashier requests ID, the checker shall present to the cashier the ID in the checker's possession.

j. If the cashier asks the checker his or her age, the checker shall respond by presenting his or her ID for examination by the cashier rather than by stating his or her age.

k. The checker shall not attempt to persuade the cashier to sell the cigarettes by taking steps other than those expressly set forth in this Protocol.

l. If the cashier provides the requested cigarettes, the checker shall pay for them and the food item, if applicable, obtain the receipt and whatever change is owed, and promptly leave the store.

m. If the cashier declines to make the sale, the checker shall purchase only the food item and obtain the receipt, if applicable, and leave the store.

n. Regardless of whether a purchase of cigarettes occurs, the checker shall attempt to make a mental note of the cashier's name and general appearance.

o. The person described in Section 3.c above who accompanies the checker to the retail store shall promptly meet the checker as soon as the checker leaves the store to determine whether cigarettes were purchased and to obtain them and the receipt (and the food item, if applicable) from the checker if they were.

#### 4. Checkers Who Are Not Underage Persons: Instructions to Checkers and Conduct of External Performance Checks

External performance checks in which the checker is not an underage person shall be conducted as follows:

a. The checker shall have no ID in his or her possession during the external performance check, but shall have a sum of money sufficient to pay for the cigarettes that the checker will attempt to purchase and, if applicable, for the food item that the checker will attempt to purchase.

b. At least 60% of external performance checks shall be conducted on weekends or between 3:00 P.M. and 8:00 P.M. on weekdays.

c. The checker shall enter the store alone.

d. In at least 80%, but not more than 90%, of external performance checks, the checker shall select a food item, which shall consist of a soft drink, snack, or small food package (if individual beverages or snacks may not be purchased at a check-out counter where tobacco products may be purchased). The food item shall vary from one external performance check to another.

e. The checker shall approach a check-out counter where tobacco products may be purchased.

f. The checker shall request from the cashier a single pack of cigarettes (or the smallest package of cigarettes available if single packs of cigarettes are not sold at the store), and, if applicable, place the food item on the counter. The brand requested shall vary among external performance checks, and shall be chosen from a single list of five brands provided to Wal-Mart by the Attorneys General.

g. The checker shall place on the counter enough money to purchase the cigarettes requested and the food item, if applicable.

h. If the cashier requests ID, the checker shall state that he or she does not have an ID in his or her possession but is old enough to buy cigarettes.

i. If the cashier asks the checker his or her age, the checker is to respond by accurately stating his or her age.

j. The checker shall not attempt to persuade the cashier to sell the cigarettes by taking steps other than those expressly set forth in this Protocol.

k. If the cashier provides the requested cigarettes, the checker shall pay for them and the food item, if applicable, obtain the receipt and whatever change is owed, and promptly leave the store.

l. If the cashier declines to make the sale, the checker shall purchase only the food item and obtain the receipt, if applicable, and leave the store.

m. Regardless of whether a purchase of cigarettes occurs, the checker shall attempt to make a mental note of the cashier's name and general appearance.

## 5. Following the External Performance Checks

a. Immediately following each external performance check, the checker, with the assistance of any accompanying person, shall complete a report form that includes, at minimum, the following items:

- i. the checker's name, sex and date of birth;
- ii. the date and time of the external performance check;
- iii. the location or address of the Wal-Mart store checked;
- iv. the name or a brief description of the Wal-Mart cashier involved;
- v. the brand of cigarettes and size of cigarette package requested;
- vi. whether ID was requested;
- vii. whether ID was presented;
- viii. whether the cashier appeared to check the ID;
- ix. how the cash register or other electronic devices were used to confirm the checker's age;
- x. whether the cigarettes requested were purchased;
- xi. comments regarding any noteworthy aspects of the transaction.

b. The checker shall provide the receipt (if one was obtained) to the independent entity, who shall provide a copy of it to Wal-Mart within three (3) days of the external performance check.

c. The independent entity shall retain for at least five years each receipt obtained and each written report prepared pursuant to this Protocol.

d. Any cigarettes purchased in connection with an external performance check shall be retained by the independent entity for at least six months and shall thereafter be destroyed. Any food item purchased in connection with an external performance check shall thereafter be destroyed or donated to a charitable organization.