

PROTOCOL REGARDING REMOTE SALES OF PM USA CIGARETTES

WHEREAS, numerous laws impose prohibitions or restrictions on the sale or shipment of tobacco products to consumers through means other than a face-to-face transaction at which the seller can check the consumer's identification, including sales over the internet or by mail order, telefacsimile or telephone ("Remote Sales");

WHEREAS, the State Attorneys General (the "Attorneys General") believe that Remote Sales of tobacco products in violation of these laws are detrimental to the public health;

WHEREAS, it is the independent practice of Philip Morris USA Inc. ("PM USA") to support compliance with these laws with respect to Remote Sales of its cigarettes, and to require that all of its Direct Buying Customers and retailers participating in any PM USA Retailer Incentive Program comply with these laws with respect to Remote Sales of those cigarettes and obtain reliable age verification at the point of purchase and delivery (collectively, the "compliance and age verification practices");

WHEREAS, PM USA has worked with the Attorneys General to develop procedures to implement the compliance and age verification practices, in order both to further those practices and to provide support to the Attorneys General in their efforts to ensure compliance with these laws with respect to Remote Sales of cigarettes manufactured by PM USA;

WHEREAS, PM USA and the Attorneys General have developed the procedures set forth below, which PM USA is willing voluntarily to implement and which the Attorneys General believe will help implement the compliance and age verification practices and provide support for the Attorneys General's efforts to ensure compliance with these laws with respect to Remote Sales of cigarettes manufactured by PM USA;

NOW, THEREFORE, the parties agree as follows:

1. Procedures Regarding Remote Sales Made Directly by PM USA Direct Buying Customers.

(a) PM USA will suspend selling cigarettes to a Direct Buying Customer if one of the undersigned Attorneys General provides written notice to PM USA:

(i) stating that the Direct Buying Customer itself or through an Affiliated Company is engaged in Remote Sales of PM USA cigarettes in or into the Attorney General's State in a manner that the Attorney General has determined to be in violation of the laws of that State; and

(ii) setting forth in writing the reasonable legal and factual basis for the Attorney General's determination that the sales in question violate the laws of that State.

(b) The suspension will remain in effect until such time as the Direct Buying Customer provides adequate assurance to such Attorney General that it will comply with the laws of that State governing the Remote Sales of tobacco products with respect to its sales of PM USA cigarettes in or into that State; provided, however, that the Minimum Period will apply unless the Direct Buying Customer demonstrates to such Attorney General that his or her determination as stated in the notice described above was incorrect.

2. Procedures Regarding Remote Sales by Customers of PM USA Direct Buying Customers Where the Applicable Attorney General Determines that the Direct Buying Customer has Legal Responsibility for the Sales.

(a) PM USA will reduce the volume of cigarettes allocated to a Direct Buying Customer if one of the undersigned Attorneys General provides written notice to PM USA:

(i) stating that the Attorney General has determined: (A) that the Direct Buying Customer is violating the laws of the Attorney General's State by virtue of its re-sale of PM USA cigarettes to a Third Party Seller that is engaged in Remote Sales of PM USA cigarettes in or into that State in a manner that the Attorney General has determined to be in violation of the laws of that State, and (B) that the Direct Buying Customer knew or reasonably should have known that its conduct in question constituted a violation of the laws of that State;

(ii) stating that the Attorney General has provided similar written notice to the Direct Buying Customer in question; and

(iii) setting forth in writing the reasonable legal and factual basis for the Attorney General's determination that the Direct Buying Customer's conduct in question constitutes a violation of the laws of that State and that Direct Buying Customer knew or reasonably should have known that its conduct constituted such a violation.

(b) The weekly reduction in the volume allocated will be determined as follows:

(i) except as provided in Clause (ii) below, the weekly reduction will be the average volume of PM USA cigarettes that the Direct Buying Customer reported it re-sold to the Third Party Seller in question each week during the 52-week period preceding the date of the notice described above;

(ii) PM USA will also decline payment of any unpaid (as of the date of its receipt of the notice described above) portion of any Trade Program Incentives that would otherwise be payable to the Direct Buying Customer on the PM USA cigarettes that it reported it re-sold to the Third Party Seller in question and that were the subject of the Attorney General's determination in such notice; provided, however, that PM USA may pay the unpaid portion if ordered to do so in any proceeding brought by the Direct Buying Customer or if the Direct Buying Customer demonstrates to such Attorney General that his or her determination as stated in such notice was incorrect. If the Direct Buying Customer was not eligible for per-carton Trade Program Incentives from PM USA (whether paid or unpaid as of the date of receipt of such notice) equal to at least one percent of the average per-carton list price of the PM USA cigarettes that the Direct Buying Customer reported it re-sold to the Third Party Seller in question and that were the subject of the Attorney General's determination in such notice, then the weekly reduction in the volume allocated will be twice the amount specified in Clause (i) above.

(iii) if while the reduction (whether measured under Clause (i) or Clause (ii)) remains in effect: (A) another Direct Buying Customer reports to PM USA that it has increased its sales of PM USA cigarettes to the first Direct Buying Customer; and (B) the first Direct Buying Customer or such Attorney General reports to PM USA that the first Direct Buying Customer is still re-selling PM USA cigarettes to the Third Party Seller in question (or to an entity that such Attorney General reports to PM USA is an Affiliated Company of that Third Party Seller), then the weekly reduction in the volume allocated to the first Direct Buying Customer will be increased by the average weekly volume that the first Direct Buying Customer reported it re-sold to the Third Party Seller (or to such Affiliated Company) in question during the period in which the reduction was in effect.

(c) The reduction in the volume allocated will remain in effect until such time as the Direct Buying Customer provides adequate assurance to such Attorney General either (i) that it will not re-sell PM USA cigarettes to the Third Party Seller in question (or to an entity that the Direct Buying Customer knows or has reason to know is an Affiliated Company of that Third Party Seller) or (ii) that it and the Third Party Seller in question will comply with the laws of that State governing the Remote Sales of tobacco products with respect to their respective sales of PM USA's cigarettes in or into that State; provided, however, that, if the notice described in Subparagraph (a) above to PM USA from such Attorney General further shows that the Direct Buying Customer had previously been advised in writing by any State or Federal governmental entity that the Third Party Seller in question (or an entity identified by such State or Federal governmental entity in such writing as an Affiliated Company of that Third

Party Seller) was engaged in illegal Remote Sales of PM USA cigarettes and that such State or Federal governmental entity deemed the Direct Buying Customer to have legal responsibility for such illegal sales, then the Minimum Period will apply unless the Direct Buying Customer demonstrates to such Attorney General that his or her determination as stated in such notice was incorrect.

3. Procedures Regarding Remote Sales by Retailers Participating in any PM USA Retailer Incentive Program.

(a) PM USA will suspend a retailer from participation in any Retailer Incentive Program that PM USA maintains if one of the undersigned Attorneys General provides written notice to PM USA:

(i) stating that the retailer is engaged in Remote Sales of PM USA cigarettes in or into the Attorney General's State in a manner that the Attorney General has determined to be in violation of the laws of that State; and

(ii) setting forth in writing the reasonable legal and factual basis for the Attorney General's determination that the sales in question violate the laws of that State.

(b) The suspension will remain in effect until such time as the retailer provides adequate assurance to such Attorney General that it will comply with the laws of that State governing the Remote Sales of tobacco products with respect to its sales of PM USA cigarettes in or into that State; provided, however, that the Minimum Period will apply unless the retailer demonstrates to such Attorney General that his or her determination as stated in the notice described above was incorrect.

4. Adequate Assurance of Future Compliance or Conduct; Certification to the Applicable Attorney General.

Without limitation as to other potential means of providing adequate assurance of future compliance or conduct, a Direct Buying Customer or retailer whom PM USA has suspended or to whom PM USA has reduced the volume of cigarettes allocated and who is seeking reinstatement:

(a) will be considered as a presumptive matter to have provided adequate assurance that it (and, in the case of Paragraph 2, the Third Party Seller) will comply with all relevant laws referenced in the Paragraph at issue with respect to sales of PM USA cigarettes in or into the State in question if it provides a certification to that effect under penalty of perjury to the Attorney General in

question (and, in the case of Paragraph 2, provides a similar certification from the Third Party Seller); and

(b) will be considered as a presumptive matter to have provided adequate assurance for purposes of Paragraph 2 that it will not re-sell PM USA cigarettes to the Third Party Seller in question (or to an entity that the Direct Buying Customer knows or has reason to know is an Affiliated Company of that Third Party Seller) if it provides a certification to that effect under penalty of perjury to the Attorney General in question.

5. Time Period for Commencement of Suspensions and Reductions of Volume.

A suspension or reduction of volume allocated under Paragraphs 1, 2 or 3 will commence 14 days after receipt by PM USA of the requisite notice from one of the undersigned Attorneys General meeting the requirements of the Paragraph at issue and continue for the applicable period; provided, however, that:

- (a) if the Direct Buying Customer or retailer notifies PM USA prior to the end of that 14-day period that it has made a written submission to the Attorney General in question that the Attorney General's determination as stated in the notice at issue was incorrect, the suspension or reduction of volume allocated will not commence unless and until the Attorney General notifies PM USA and the Direct Buying Customer or retailer in writing that the submission has not changed his or her determination and provides the reasonable basis why that determination has not changed;
- (b) if a suspension or reduction in volume allocated under Paragraphs 1, 2 or 3 has commenced, and the Direct Buying Customer or retailer at issue demonstrates to the Attorney General in question that the Attorney General's determination as stated in the notice at issue was incorrect, the suspension or reduction in volume allocated will no longer be required to remain in effect; and
- (c) in the case of a reduction of volume allocated under Paragraph 2, if the Direct Buying Customer facing the reduction initiates a proceeding challenging whether it can be deemed to have violated the law of the State in question by virtue of its re-sale of PM USA cigarettes to the Third Party Seller in question or whether PM USA can legally take action under this Protocol, and the Attorney General who provided the notice has not commenced an action against the Direct Buying Customer on the basis of the determination described in such notice, the reduction will not commence (or, if already commenced, will be suspended and will not resume) unless and until: (i) the Attorney General commences such an action; or (ii) the legal challenge commenced by the Direct Buying Customer is rejected.

6. Amendments to Sales Contracts and Retailer Incentive Programs.

Within 60 days after the execution of this Protocol by PM USA and the Attorneys General, PM USA will execute any amendments to its sales contracts with its Direct Buying Customers and the terms of any Retailer Incentive Program that are necessary to eliminate any conflict with the substantive terms of this Protocol.

7. Reinstatement; Assessment and Determination by Attorney General.

(a) The Attorney General who provided a notice as to a Direct Buying Customer or retailer pursuant to Paragraphs 1, 2 or 3 will:

(i) promptly assess any submission made by the Direct Buying Customer or retailer, whether the submission relates to assurance of future compliance or conduct or to the correctness of the Attorney General's determination as stated in the notice;

(ii) promptly determine in good faith whether the submission comprises adequate assurance of future compliance or conduct as described in Paragraphs 1(b), 2(c) or 3(b) (whichever is applicable) and Paragraph 4 or demonstrates that the Attorney General's determination as stated in the notice was incorrect; and

(iii) promptly notify both the Direct Buying Customer or retailer and PM USA of such determination.

(b) In any event, if the Direct Buying Customer or retailer provides PM USA with a copy of an executed certification to the Attorney General in question meeting the standards set forth in Paragraph 4, PM USA will be entitled to presume that the Direct Buying Customer or retailer has provided adequate assurance of future compliance or conduct as described in Paragraphs 1(b), 2(c) or 3(b) (whichever is applicable) as of the date of the executed certification unless and until the Attorney General in question notifies PM USA otherwise and provides sufficient reason hereunder why the certification does not constitute such adequate assurance.

8. No Limitation on Other Measures.

Nothing in this Protocol will prohibit or limit: (a) the right of the Attorneys General to commence an action against any individual or entity found to be engaging in the illegal sale of tobacco products or to be facilitating such illegal sale; or (b) the right of PM USA to terminate, suspend, or otherwise take any action against any Direct Buying Customer, Third Party Seller or retailer pursuant to any rights provided by law, contract or otherwise.

9. Notices.

Notices under this Protocol will be sent as follows:

In the case of PM USA, to:

Denise F. Keane
Executive Vice President and General Counsel
Post Office Box 26603
Richmond, Virginia 23241

In the case of an Attorney General, to:

William Lieblich, Esq.
Tobacco Enforcement Counsel
National Association of Attorneys General
750 First Street, N.E.
Suite 1100
Washington, D.C. 20002

Mr. Lieblich (or his successor at the National Association of Attorneys General) shall forward copies of all notices to the applicable Attorney General.

10. Cooperation.

The Attorneys General, on the one hand, and PM USA, on the other hand, will cooperate and take reasonable measures in support of each other in any lawsuit or other action brought against a party by a person or entity against whom PM USA has taken action pursuant to Paragraphs 1, 2 or 3 arising out of such action by PM USA or out of this Protocol. Without limitation as to other remedies, this Protocol is terminable by any party who fails to receive such cooperation and support. The parties' obligations under this Paragraph will survive the termination of this Protocol.

11. Coordination of Enforcement.

The Attorneys General will use their best efforts, in cooperation with PM USA, to coordinate the enforcement and interpretation of this Protocol and to resolve any inconsistent such enforcement or interpretation (and the effects thereof) as to any matter that is not exclusively local in nature.

12. Remedy.

Except as provided in Paragraph 10, the sole remedy for breach of this Protocol is specific performance.

13. Term.

Except as provided in Paragraph 10, this Protocol is terminable by any party upon 30 days written notice.

14. No Action.

No party will be required to take any action under this Protocol if that action has been enjoined or been determined by a court of competent jurisdiction to violate any law.

15. Headings.

The headings of the paragraphs are not substantive terms of this Protocol, are for reference only, do not limit, expand or otherwise affect the contents or meaning of this Protocol, and are not to be used in interpreting any party's obligations under this Protocol.

16. Modifications.

Any modification of this Protocol shall be in writing signed by PM USA and the applicable Attorney General.

17. Definitions.

As used in this Protocol, the following terms have the following meaning:

- (a) “Affiliated Company” means any company that: (i) owns or controls, is owned or controlled by, or is under common ownership or control with, the company in question; or (ii) operates out of the same business premises as, or uses the same Internet address as, the company in question. For the purposes of this subparagraph, the phrase “operating out of the same business premises” shall mean occupying or sharing the same physical office space or warehouse space.
- (b) “Direct Buying Customer” means a person or entity to whom PM USA directly, and not through any intermediary, sells its cigarettes.
- (c) References to sales of cigarettes “in or into” a State mean only (1) sales to consumers that take place wholly within that State and (2) sales made from outside that State to consumers within that State.
- (d) “Minimum Period” means 30 days, except:

(i) in the case of a Direct Buying Customer or retailer as to whom action was taken under this Protocol for the Minimum Period at any time within the three years preceding the new notice, the Minimum Period will be 120 days;

(ii) in the case of a Direct Buying Customer or retailer as to whom action was taken under this Protocol for the Minimum Period twice within the five years preceding the new notice, the Minimum Period will be one year;

(iii) in the case of a Direct Buying Customer or retailer as to whom action was taken under this Protocol for the Minimum Period more than twice within the five years preceding the new notice, the Minimum Period will be three years;

(iv) in the case of Paragraphs 1 or 2, if the applicable Minimum Period is 30 days, but prior to the end of the 30-day Minimum Period the Direct Buying Customer provides adequate assurance of future compliance or conduct as described in Paragraphs 1(b) or 2(c), whichever is applicable under the circumstances, including but not limited to by means of the certification described in Paragraph 4, PM USA may elect in its discretion to substitute for the suspension or reduction in the volume allocated for the remaining term of the Minimum Period a reduction in per-carton Trade Program Incentives equal to at least fifty percent of the Trade Program Incentives that would otherwise apply (but in no event less than one percent of the average per carton list price of the PM USA cigarettes) with respect to all cigarettes that would otherwise be subject to the suspension or reduction in volume.

(e) “Remote Sales” means sales of tobacco products to consumers through means other than a face-to-face transaction at which the seller can check the consumer’s identification, including sales over the internet or by mail order, telefacsimile or telephone.

(f) “Re-sale,” “re-sold” and “re-sell” include, in addition to direct sales of PM USA’s cigarettes by the Direct Buying Customer to the Third Party Seller in question, sales by the Direct Buying Customer to such Third Party Seller through an Affiliated Company or other intermediary or intermediaries whom the Direct Buying Customer knows is selling those cigarettes to such Third Party Seller.

(g) “Retailer Incentive Program” means a program under which PM USA provides promotional payments, incentives or other benefits to retailers who sell PM USA’s cigarettes.

(h) References to “State law” or “laws of the State” include a federal law if: (i) a violation of that federal law would also violate a law of the State in question; (ii) the Attorney General has express statutory authority to enforce or enjoin violations of such federal law; or (iii) the Attorney General has been adjudicated by a court of competent jurisdiction to have the power to enforce or enjoin violations of such

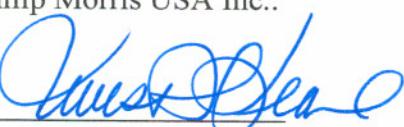
federal law (and no court of coordinate or superior jurisdiction has issued a contrary ruling).

- (i) "Third Party Seller" means a person or entity to whom a Direct Buying Customer re-sells PM USA cigarettes and who in turn then sells those cigarettes to another person or entity.
- (j) "Trade Program Incentives" means payments and allowances to a Direct Buying Customer under a PM USA manufacturer trade program, including (1) cents-per-carton payments for services provided by the Direct Buying Customer in connection with resale of PM USA's cigarettes and (2) allowances expressed as a percentage deduction from the list price of the cigarettes, provided as an incentive for the Direct Buying Customer either to make prompt payment on cigarettes it purchased from PM USA or to satisfy specified performance standards.

IN WITNESS THEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Protocol as of the date specified below:

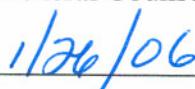
For Philip Morris USA Inc.:

By: _____



Denise F. Keane
Executive Vice President
and General Counsel

Date: _____



For the Participating States:

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Attorney General of Alabama

Mike Beebe
Attorney General of Arkansas

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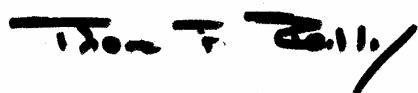
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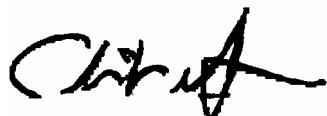
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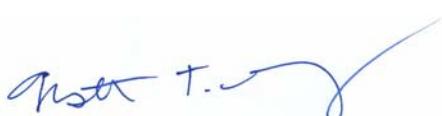
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Peggy A. Lautenschlager
Attorney General of Wisconsin



Pat Crank
Attorney General of Wyoming

Date:
January 26, 2006