

In the matter of  
WALGREEN CO.

## **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 based on the following facts:

- 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;

THEREFORE, the Walgreen Co. (hereafter referred to as "Walgreens"), recognizing the need to step forward and demonstrate its commitment to responsible marketing of this age-restricted product and to the health and welfare of our nation's youth, agrees to enter into the following Assurance of Voluntary Compliance.

### **AGREEMENT**

1. This Assurance of Voluntary Compliance ("Assurance") is entered into by the Attorneys General of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, 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 Walgreens. The provisions of this Assurance shall apply in the above-referenced States.

2. This Assurance follows an analysis of compliance check data collected by the FDA and by state authorities under the Synar Amendment, section 1926(b)(2) Public Health Service Act [42 USC 300x-26(b)(2)] 1992. Such data indicates that retail stores and pharmacies (hereafter, "stores") operating under the Walgreens name made tobacco sales in the above-referenced States 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.
3. Walgreens is a publicly held corporation, with its principal place of business in Deerfield, Illinois. Walgreens operates stores which sell, among other things, tobacco products.
4. Walgreens has expressed its commitment to employing tobacco retailing practices which are designed to prevent the sale of tobacco products to minors. Without admitting liability for or commission of any of the unlawful acts or practices described or referred to herein, Walgreens agrees to enter into this Assurance of Voluntary Compliance which shall be binding on Walgreens, and on its subsidiaries, successors and assigns.
5. The parties reserve the right to discuss the viability of any or all of these provisions as they are implemented, having due regard for changes in laws and regulations, as well as changes in equipment, technology, or methodology of retail sales over time. Any modifications to this Assurance shall be by written agreement of the parties.
6. This Assurance is intended to settle all claims of the Attorneys General as may arise from Consumer Protection jurisdiction<sup>2</sup> over Walgreens' acts and practices relating to tobacco sales to

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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. For Maine, Vermont, and West Virginia, in which Walgreens has no retail outlets as of the date this Assurance is executed, the Assurance shall apply if and when Walgreens develops or acquires a retail outlet in such state. With regard to Virginia, this document will be titled an "Agreement."

<sup>2</sup> §13A-12-3, Code of Alabama (1975) (AL); A.R.S. §44-1521 et seq. (AZ); Arkansas Code Annotated 4-88-101 et seq. (AK); Cal. Civ. Code §1750 (West) and Cal. Bus. & Prof. Code §§17200 & 17500 (West) (CA); Colorado Consumer Protection Act, §§6-1-101, et seq., C.R.S. (2001) CO); Conn. Gen. Stat. §42-110a et seq. (1993) (CT); Fla. Stat. Ann. §501.201 (West) (FL); O.C.G.A. 10-1-

minors occurring prior to the execution of this Assurance by Walgreens. Nothing herein shall affect other remedies available to any state or local jurisdiction in the signatory States in connection with a past or future underage sale of tobacco at a particular retail location. The Attorneys General shall inform other state agencies that monitor or enforce laws concerning the sale of tobacco to minors that Walgreens has entered into this Assurance. Prior to seeking to enforce this Assurance, a signatory Attorney General shall contact the person designated by Walgreens in section III.F to attempt to resolve the State's concerns. Failing resolution, the Attorneys General agree to provide Walgreens thirty (30) days advance written notice prior to instituting any proceeding under the States' Consumer Protection jurisdiction 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.

7. This Assurance may be executed in counterparts.
8. No provision of this Assurance is intended or shall be interpreted to authorize conduct in violation of applicable local, state or federal law.
9. Walgreens knowingly and voluntarily agrees to adopt and to implement the tobacco retailing practices set forth in this Assurance. These practices relate to efforts to prevent persons under legal age from having access to and using tobacco. Although tobacco is not the only item to which youth access is restricted, the term "youth access" is used herein as a shorthand reference to age

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390 et seq. of the Fair Business Practices Act (GA); Idaho Code Section 48-601 et seq. (ID); Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §505/1 et seq. (IL); Iowa Code §714.16 (2001) (IA); 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 §205-A et seq. and tit. 10 §1211 (ME); Maryland Annotated Code, Commercial Law Article, §§13-101 et seq. (MD); M.G.L. c. 93A (MA); MCL445.901 et seq. (MI); Minn. Stat. s. 325F.68-.69 (prevention of consumer fraud) and s. 325D.43-.48 (2000) (MN); Miss. Code Ann. §75-24-1 (MS); 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 (NY); O.R.C. § 1345.01 et seq. (OH); 15 O.S. (1991) §§751 et seq. (OK); ORS 646.605, et seq.

(OR); 73 P.S. §§201-1 et seq. (PA); R.I. Gen. Laws §§ 23-71-1 through 3 (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 (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 (UT); Vermont Consumer Fraud Act, 9 V.S.A. §2451 et seq. (VT); Virginia Consumer Protection Act, Va. Code § 59.1-196 et seq. (VA); 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).

restrictions on tobacco products only, and specifically refers to the sale of tobacco products to persons under the legal age to purchase tobacco products in the particular state. The term "tobacco products" is intended to include all tobacco-containing products, including cigarettes (including bidis), cigars, loose tobacco, chewing tobacco, and snuff.

10. This Assurance shall not be effective or considered executed until February 13, 2002, by which date the signature of Walgreens and all of the Attorneys General of the States listed in paragraph 1 shall have been affixed.

## **I.**

### **Personnel Policies Relating to the Sale of Tobacco Products to Minors**

Walgreens shall commence implementation of the following personnel policies relating to youth access within sixty (60) days of the signing of this Assurance and shall complete implementation as soon as circumstances permit, but in any event no later than one-hundred fifty (150) days after the signing of this Assurance:

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

1. Walgreens shall attempt to minimize the use of persons under the legal age for purchasing tobacco in positions that may involve the sale of tobacco products. Walgreens shall closely supervise any such persons.
2. Upon hiring, Walgreens shall inform new employees hired for positions that may involve selling tobacco, or who may supervise anyone who sells tobacco, of the importance of compliance with laws relating to youth access. The information Walgreens provides shall be in written or electronic form, shall include references to company policies, legal consequences, and health concerns associated with youth access, and 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) Walgreens monitors employee compliance with youth access laws and policies. Walgreens shall obtain a written or electronic acknowledgment that the employee has read and understands the information provided.

#### **B. Training**

1. Before assuming any job duties that involve or may involve the sale of tobacco, an employee shall receive the following training relating to tobacco, which shall be performed by a competent person, or if conducted electronically, shall be overseen by a competent person, and shall be provided to all current employees within six (6) months of the signing of this Assurance by Walgreens:

- a. A review of all Walgreens policies relating to youth access, which policies have taken into account all applicable federal, state, and local laws relating to youth access.
- b. An explanation of the health-related reasons that restriction of youth access to tobacco is an important matter.
- c. A review of the range of tobacco products sold by Walgreens to which Walgreens' youth access policies apply.
- d. Instruction that an employee must decline to make a tobacco sale if the circumstances reasonably suggest that doing so would violate the laws or company policies regarding youth access.
- e. A review of the 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 an I.D. that must be checked, with particular emphasis on government-issued forms of identification 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 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 minors who produce identification showing that they are in fact under the legal age, and the importance of devoting the time and effort needed to establish that a customer is of age.

Walgreens shall continually review and address any weaknesses identified in the training process.

2. Walgreens shall provide all employees who sell tobacco or manage those who sell tobacco additional training periodically to ensure that they maintain the requisite knowledge, skill, and motivation. Such training shall include a review of Walgreens' policies on youth access and an updated review of performance by the company and the particular store.
3. In the event an employee sells tobacco products to minors in violation of federal, state or local laws, or fails to pass an internal or external performance check pursuant to sections III.B. or C., and if Walgreens desires to retain the employee, Walgreens shall provide

additional training as soon as possible within no more than thirty (30) days of Walgreens' receipt of notice of such violation. Each such employee shall sign an acknowledgment in writing or electronically that he or she has read and understands the policy and other information provided.

## **II. Support Tools**

- A. Walgreens states that it presently uses computer/cash registers in all its stores which prompt the clerk to obtain and check identification, and require the clerk to enter information from the identification to determine the age of the customer. Walgreens shall maintain this type of register or a comparable device in order to ensure that the entry required to be made when identification is checked in connection with a tobacco sale can be easily and reliably performed and is actually made. Nothing in this Assurance requires or sanctions practices that involve the retention of information identifying individual purchasers.
  
- B. In addition to meeting whatever signage and posting requirements or restrictions may be embodied in local, state or federal law, Walgreens shall post signs indicating that a person must be 18 to buy tobacco (where the legal age is 18, or 19 where the legal age is 19) and that identification is checked for all persons appearing to be under the age of 27 (or such higher age as Walgreens in its sole discretion determines appropriate for its stores) on one of the doors at each entrance by which a customer may enter the establishment (facing out) and at each check-out where tobacco products are sold.

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

- A. Supervision and Accountability
  - 1. Walgreens shall instruct its store managers and assistant managers (hereafter, "managers") upon assuming responsibility for supervising employees selling tobacco that their responsibilities include the monitoring and supervision of staff compliance with youth access laws and policies on an on-going basis, and shall inform 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 the manager.
  
  - 2. Walgreens shall implement a policy requiring each store manager to report all alleged violations of laws concerning the sale of tobacco products to minors occurring at the store to a designated department in Walgreens' corporate offices within ten business days of

receipt of notice of the alleged violation. Walgreens' corporate office shall maintain a record of all reported alleged violations and their dispositions for three years.

B. Internal Performance Checks

Walgreens shall implement and maintain a program of internal performance checks in states whose Attorneys General are parties to this Assurance designed to assist Walgreens 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. The 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 clerks) have no reason to know that a given attempt to purchase tobacco is a performance check.
2. The internal performance checks shall occur 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 minors that occurred after the effective date of this Assurance, or has failed an external performance check pursuant to section III.C. Walgreens shall perform this check within forty-five (45) days after Walgreens' corporate office receives written notice of the alleged violation or failure.
3. The internal performance check shall either (i) where it is legal to do so, use a person who is under legal age to buy tobacco (a 17 year old where the legal age is 18, an 18 year old where the legal age is 19), in order to test both whether identification is being requested as required and whether sales are made in spite of the presentation of a valid I.D. accurately showing the tester's age; or (ii) use a person of legal age to buy tobacco 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 will determine whether the employee selling the tobacco product asked the purchaser to produce identification, whether the purchaser provided an acceptable form of identification (see section V.A.6), whether the employee checked the identification to verify whether the purchaser is of legal age, and in the case of attempted purchase by a person under legal age to buy tobacco, whether the sale was consummated.
4. In the event of a failed check for an employee whom Walgreens desires to retain, the 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. Walgreens shall also take whatever other action the company deems necessary to ensure future compliance.

5. Walgreens shall inform the employee who passes a performance check and his/her manager of the successful performance check.
6. The Attorneys General agree not to institute legal proceedings based on any tobacco sales that are made during internal performance checks conducted pursuant to this sub-section.

C. External Performance Checks

In addition to the internal performance checks described above, Walgreens shall arrange for an independent entity reasonably acceptable to the Attorneys General to conduct performance checks consistent with an agreed protocol each six months at 225 or more randomly-selected stores that sell tobacco products. The independent entity shall be instructed to conduct checks at each selected store for the purpose of obtaining an accurate and reliable indication of actual store practices in connection with sales of tobacco products. These external checks shall be performed in the following manner:

1. The independent entity will randomly select which stores will be checked from among the states whose Attorneys General are parties to this Assurance, and no store selected to be checked will be identified to Walgreens, directly or indirectly, until after the check of that outlet is completed.
2. The performance check shall be conducted as follows:
  - (i) Upon the written request of the Attorney General, such request to be made to the person designated by Walgreens in section III.F at least thirty (30) days prior to the first or a subsequent six-month performance check period, use a person who is under legal age to buy tobacco (a 17 year old where the legal age is 18, an 18 year old where the legal age is 19), in order to test both whether identification is being requested as required and whether sales are made in spite of the presentation of a valid I.D. accurately showing the tester's age to be below the legal age for purchase, or
  - (ii) Where the Attorney General does not make the request referred to in subparagraph (i), use a person of legal age to buy tobacco 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. The check will determine whether the employee selling the tobacco product asked the purchaser to produce identification, whether the purchaser provided an acceptable form of identification (see section V.A.6), and whether the employee checked the identification to verify whether the purchaser is of legal age. In the event that a store fails to perform successfully in the performance check, Walgreens shall request that the independent entity will conduct a second check (“re-check”) of the store within the same six month period.
3. Results of these performance checks, including re-checks, shall be made available to the



store manager and a corporate office designee. Further, Walgreens shall require by contract that the results of the external checks be reported by the independent entity to a person designated to receive such reports on behalf of the Attorneys General.

4. For purposes of retaining the independent entity to perform the external checks, Walgreens 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, rather than on the basis of whether the results were favorable.
5. Walgreens shall cooperate in providing access to information relating to the results of the external performance checks.
6. The performance checks conducted pursuant to this sub-section shall commence within ninety (90) days of the execution of this Assurance, unless Walgreens 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 performance checks shall commence as soon thereafter as circumstances permit, but in any event no later than one-hundred fifty (150) days after the execution of this Assurance. While Walgreens' goal regarding the sale of tobacco products is to eliminate all sales to minors, for the purpose of this sub-section, Walgreens' progress shall be measured by whether 90% or more of the external performance checks, not including re-checks, conducted pursuant to this section are successful.
7. In the event Walgreens attains a performance measure of 90% or higher for any six-month period, Walgreens may reduce the number of random external checks conducted in subsequent six month periods by 25%. In the event Walgreens attains a 90% rate for any two consecutive six-month periods, Walgreens may eliminate the requirement to conduct external checks.
8. The Attorneys General agree not to institute legal proceedings based on any tobacco sales that are made during external performance checks conducted pursuant to this sub-section.

D. Video-tapes

1. In all stores that have one or more security cameras designed and placed to video-tape transactions at the cash register, Walgreens shall utilize such cameras to periodically video-tape tobacco sales transactions of cashiers who have failed to comply with Company policies concerning the sale of tobacco products to minors.
2. In cases in which the manager suspects an employee's violation of youth access laws and/or Walgreens' policies the tapes shall be reviewed to permit a realistic assessment of

whether the employee is in compliance.

3. If the review determines that the employee has not complied with company policy, as soon as practicable after the review, the manager shall meet with the employee to inform the employee of that fact and that he or she will be the subject of an additional compliance check in the future.
4. Walgreens shall make reasonable efforts to display in each store a clear and conspicuous sign at or near the cash register informing customers that security cameras may be used to detect underage attempts to buy tobacco.

E. Electronic Identification Scanning Systems and/or Cash Register Locks

To the extent that Walgreens uses electronic identification scanning systems or cash register locks to store data that would assist in evaluating whether the employees are properly using the systems, Walgreens shall review such data periodically, use it to assess employee performance, and provide remedial training and support, as necessary, for those employees who appear to need it.

F. Youth Access Compliance Designee

Walgreens shall designate a corporate-level in-house attorney to be responsible for assuring 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 minors.

**IV.  
Vendor-Assisted Sales**

- A. Walgreens shall display and store cigarettes and smokeless tobacco in a format that requires an employee's assistance in retrieving the tobacco product from a restricted-access location.
- B. No vending machines shall be used to sell tobacco products.

**V.  
Other Tobacco Policies**

A. Written Policies

Walgreens' policies relating to the sale of tobacco products shall be in written or electronic form. Walgreens shall provide a copy to each employee who sells tobacco within sixty days of Walgreens' signing this Assurance or upon hiring if that occurs thereafter. Except with respect to Walgreens' policy which currently requires clerks selling alcohol to be 21 years of age or older, Walgreens' tobacco policies

intended to prevent underage tobacco sales shall be no less stringent or comprehensive than policies intended to prevent underage alcohol sales. It is understood that differences in the law may require differences in policy. Walgreens' policies shall, at minimum, embody the standards and practices relating to personnel, support tools, self-monitoring, and vendor-assisted sales set forth in this Assurance and shall also include the following:

1. A policy that no one under the legal age for purchasing tobacco is permitted to purchase cigarette papers or pipes.
2. A policy that Walgreens will give comparable treatment to youth access to tobacco as it gives to underage access to alcohol in employee training and discipline, except where differences in the law require differences in policy.
3. A policy against increasing youth demand for tobacco through in-store advertising. In-store advertising shall only be located 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 distribution of free samples of tobacco products on store property.
5. A policy requiring that employees check identification in connection with tobacco product purchases by persons who reasonably appear to be under age 27 or such higher age as Walgreens in its sole discretion determines appropriate for its stores.
6. Unless otherwise provided by law, a policy that only photo-identification will be acceptable for purposes of establishing the legal age to purchase tobacco, 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

Walgreens shall provide a copy of the policies it adopts in order to comply with the standards set forth herein to a person or persons designated to receive such policies on behalf of the Attorneys General within sixty days of the execution of this Assurance, 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 days of such change or modification.

C. Contribution

Walgreens agrees to pay, within thirty (30) days of the execution date of this Assurance, the sum

of \$320,000 to the States, made payable to such accounts and addresses as the Attorneys General may direct. 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 minors, 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: \_\_\_\_\_

WALGREEN CO.

By: \_\_\_\_\_

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