



Draft

# Best Practices for Responsible Retailing

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Conference Edition



Alcohol Solutions

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## OVERVIEW

### Purpose of This Document

Tobacco addiction is the leading preventable cause of death and disease in the United States and is responsible for 1,100 premature deaths every day (Centers for Disease Control and Prevention 1993). For most smokers, tobacco dependence begins before age 18 (Rigotti et al. 2000). Each day, more than 2,000 minors become regular tobacco users (Substance Abuse and Mental Health Services Administration 2000), obtaining tobacco from commercial as well as social sources. Because today's adolescent tobacco users are tomorrow's victims of heart disease, stroke, cancer, and other tobacco-induced diseases, tobacco addiction is now understood to be a pediatric disease, in the words of former U.S. Food and Drug Administration (FDA) Commissioner David Kessler, M.D. Evidence that tobacco use may lead to depression (Goodman and Capitman 2000) and drug abuse (Garland and Weiss 1995) in adolescence indicates that tobacco use also may cause immediate as well as long-term harm to adolescent tobacco users.

The public health community has advocated a comprehensive approach to reduce adolescent tobacco use and the cycle of addiction and tobacco-induced disease that it initiates. School-based and community prevention programs and public media campaigns have intended to reduce youth *demand* for tobacco. The promotion and enforcement of laws prohibiting the sale of tobacco products to minors have intended to reduce the *supply* side of the adolescent tobacco use equation. All 50 States, most U.S. territories, and hundreds of local governments periodically inspect retailers to enforce compliance with tobacco sales-to-minors laws.

This report identifies how a comprehensive program of responsible retailing, properly designed and implemented, can contribute to the elimination of sales of tobacco and other age-restricted products to minors. The report has been produced in response to the needs of diverse stakeholders in tobacco retailing who have a vested interest in improving compliance with sales-to-minors laws.

### Model of Responsible Retailing

The model of responsible retailing identified in this report contains three distinct elements:

- ^ **Comprehensive Training of Sales Personnel.** At the center of a responsible-retailing program are procedures for verifying the age of young customers attempting to purchase tobacco (or other age-restricted products) and for refusing sales to underage customers.
  - ^ **Policies for Store Managers and Owners.** Store managers and owners have a continuing responsibility to supervise sales personnel, provide point-of-sale safeguards, and establish accountability for compliance with sales-to-minors laws.
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- ^ **Active Public Sector Role.** An aggressive enforcement program is the engine that drives responsible retailing. Public health and enforcement agencies can help retailers identify and, at times, provide the resource requirements for an effective, community-based responsible-retailing program.

Individual stores and chains that adopt and implement this model of responsible retailing can be expected to reduce their incidence of sales of tobacco products to underage buyers. However, implementation by individual stores and chains does not necessarily reduce minors' access to tobacco in the community, because one or several noncompliant stores may suffice as a commercial source of tobacco products to minors. Accordingly, this report offers guidance with a model for implementing responsible-retailing practices at the community level. The model is derived from a range of resources, including reports for State attorneys general and consent orders executed by State attorneys general and retailers; responsible-retailing programs developed by State agencies; trade associations and private companies; and responsible-retailing experts representing public health and enforcement agencies, retail organizations, and the research community.

A description of the process by which this report was prepared and an examination of questions on responsible-retailing policy and research appear in the Appendix: Developing Responsible-Retailing Best Practices.

## Intended Audience

This report is designed as a resource to assist the following stakeholders in the area of responsible retailing:

- ^ **Attorneys General.** Both individual attorneys general and workgroups of attorneys general, under the authority vested in them in many States to enforce consumer protection laws, have imposed significant penalties on retail chains found to be noncompliant with laws on tobacco sales to minors. Attorneys general have negotiated voluntary agreements on reducing tobacco sales to minors that stipulate corrective measures the retail chains would take in the hiring, training, and supervising of employees and in point-of-sale practices. This report is intended to assist State attorneys general by examining specific practices that might potentially be stipulated in assurances of voluntary compliance and other agreements arising from discussions on responsible retailing between these attorneys and the retail chains.
- ^ **Inspection and Enforcement Agencies.** Agencies that enforce State sales-to-minors laws are a primary source of information and recommendations on how retailers can more effectively comply with these laws. This report is intended as a resource for inspection and enforcement agencies to identify responsible-retailing practices that can be implemented by retailers as voluntary measures to forestall future infractions and as conditions for discharging citations. In addition, the report addresses the role of these agencies in establishing a collaborative community context for responsible-retailing initiatives.

- ^ **Retailers and Retail Associations.** As corporate citizens, many retailers share the public health objective of preventing tobacco use by and illegal tobacco sales to minors in their communities. Also, all retailers have a powerful motive of avoiding the penalties that can result from making an illegal sale: fines, suspension, and revocation of their tobacco sales permits and the potential suspension, termination, and arrest (in some States) of store employees. This report is intended as a resource for retailers and retail associations to assess their current responsible-retailing programs and to examine specific protocols that can be introduced to cashiers, store managers, and senior management to improve the effectiveness of responsible-retailing programs. In addition, the report is intended to assist retailers and their associations in establishing a context for cooperation with public sector stakeholders.
  
- ^ **Single State Authority (SSA) for Substance Abuse.** Under the mandate of the Federal Synar Regulation (*Federal Register* 1996), States are required to enforce State laws prohibiting tobacco sales to minors and to conduct inspections of a statistically significant number of tobacco permit holders each year. States that fail to reach a targeted retailer violation rate of 20 percent are in jeopardy of losing a portion of their Federal Substance Abuse Prevention and Treatment Block Grants. The SSA is the block grant recipient responsible for substance abuse prevention and treatment, including State-specific measures to prevent tobacco use by minors. This report is intended as a resource for SSA directors in their examination of responsible-retailing policies that can be enacted voluntarily or through regulatory and legislative actions.

These stakeholders have diverse and occasionally conflicting interests. Many of these conflicts are reducible to the single issue that tobacco sales are primarily a health concern for some stakeholders and primarily a revenue concern for others. Public health agencies are most concerned with the underlying issues of adolescent tobacco use and the effects that tobacco advertising and promotion in retail environments have on adolescents. Retailers, who may receive as much as 40 percent of their gross sales from tobacco products, do not wish to be cast in the role of public health advocates or health educators. Agencies that issue tobacco permits and enforce laws applicable to permit holders have complex relationships with retailers. Although these differences are real and significant, all stakeholders are unanimous in wanting to eliminate illegal tobacco sales to minors. This report recognizes and promotes opportunities for stakeholders to work toward common goals within a context of community-based cooperation.



## COMPONENTS OF A RESPONSIBLE-RETAILING PROGRAM

### Retailer Component

This section examines responsible-retailing practices as they apply to one of the key stakeholders: the retailer. Whether the retail organization is a large chain or an independently owned store, a responsible-retailing program intended to eliminate illegal sales to minors is comprehensive and not merely a set of instructions given to sales clerks at the time of hire.

Although sales clerks play a crucial role in preventing tobacco sales to minors, a responsible-retailing program also involves owners and managers of individually owned retail establishments and line managers, district managers, and senior management in retail chains. In addition to specifying the roles that everyone in the organization plays, an effective program integrates continuing supervision and accountability for preventing illegal sales to minors into the operation of the retail store. Furthermore, a responsible-retailing program assists in creating a store environment that is resistant to illegal sales to minors and product theft. (The roles of other stakeholders in a comprehensive responsible-retailing program are discussed later in [Community-Based Model: Responsible-Retailing Coalitions](#).)

A responsible-retailing program has, at its core, a set of practices that enable store personnel to verify that customers are of legal age to purchase tobacco products and to successfully refuse purchase attempts by underage buyers. The age that triggers verification is usually defined as [age 26 or younger](#),<sup>1</sup> which was the requirement of the FDA regulations. Even though the regulations were overturned by the U.S. Supreme Court on March 21, 2000, [age 26 or younger](#)<sup>2</sup> has remained a retailer standard for determining when to request an ID and is so used in this report. Individual retailers may of course establish a different age (under age 30, for example) to trigger the age-verification protocol.

### *Sales Personnel Policies*

#### Hiring

Applicants for positions that might involve selling tobacco, or supervising anyone who sells tobacco, should be informed of the importance of compliance with youth-access-to-tobacco laws. The information should include company policies and the legal consequences of illegal sales to minors for clerks and permit holders.

Applicants should be screened for past violations of prohibitions on selling or supplying tobacco or other age-restricted products to minors by the applicants or by anyone under their supervision. Such violations should be given due consideration in the hiring decision. At a minimum, screening should consist of the interviewer asking an applicant to identify any violations of sales-to-minors laws and checking the public records of sales-to-minors violations when such records are available. When possible, screening should include checking with other employers for whom

the applicant sold or supervised the sale of tobacco to learn if the applicant complied with sales-to-minors laws.

Clerks who sell tobacco should be at least 18 years of age. Consideration should be given to restricting tobacco sales to clerks who are 21 or older.

Before assuming any job responsibilities, each new hire should be informed of the following:

- ^ The employer takes into account the employee's compliance with sales-to-minors laws and store policies in connection with compensation, promotion, and retention decisions.
- ^ The employer actively monitors employee compliance with sales-to-minors laws and store policies through ongoing performance assessments by store managers and by periodically checking security tapes (when in use) and conducting internal compliance inspections (when in use).
- ^ The employee's failure to comply with sales-to-minors laws and store policies concerning youth access to tobacco products constitutes grounds for disciplinary action up to and including discharge.

New hires also should be given this information in writing and be required to sign an acknowledgment that they have read and understand it.

**DISCUSSION**

Studies have shown that sales clerks under the age of 18 are more likely than clerks 18 or older to sell tobacco to minors (DiFranza et al. 2001). Young clerks are known to sell tobacco to teenagers they know and to teenagers with whom they hope to curry favor (DiFranza and Coleman, in press) and have been subject to intimidation from other teenagers. These clerks may not possess the requisite maturity to challenge peers or fully understand the dimensions of correctly checking different forms of identification or recognizing a third-party purchase attempt. These problems can be reduced significantly by requiring that only individuals over the legal age of purchase be permitted to sell tobacco products. Best practices would preclude giving underage youth the responsibility for controlling tobacco sales. Although training in refusing sales to friends and other young customers is always important, such training is especially necessary when the store has not adopted a policy that clerks be at or over the legal age of purchase. Background checks of job applicants for prior infractions of sales-to-minors laws are routinely performed by at least one major retail chain (Circle K) and have been stipulated in consent

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decrees with the Maine Office of the Attorney General. Background checks allow an employer to decline to hire an employee who may violate sales-to-minors laws or to address the prior conduct and reinforce that no such behavior will be tolerated.

## Training

Before assuming any job duties that might include the sale of tobacco, an employee should receive comprehensive training in the laws and company policies on tobacco from an experienced and knowledgeable individual. At a minimum, the training should include the following components:

- ^ Review of Federal, State, and local laws on youth access to tobacco (in particular the health and societal costs of tobacco use as the basis for these laws; see the next <sup>^</sup>Discussion<sup>^</sup> text box).
- ^ Company policies on youth access to tobacco.
- ^ Definition of tobacco products and, where applicable, smoking paraphernalia to which company policies and sales-to-minors laws apply.
- ^ Laws and company policies on requiring identification, including the age that triggers ID verification and the acceptable forms of ID.
- ^ Specific age-verifying protocols designed to ensure that the date of birth is read, clearly understood by the clerk, and compared to a calendar or electronic age verification (EAV) device (discussed later). The trainer should explain that many illegal sales are made to minors who produce IDs showing that they are under the legal age.
- ^ Verification of an ID's authenticity.
  - ≡ The features of an ID that must be checked
  - ≡ How to tell if an ID might have been altered or is being misused
  - ≡ What an employee should do if an ID appears to be altered or misused
- ^ Prescribed methods and practical techniques for handling recurring situations.
  - ≡ Asking for ID
  - ≡ When and how to ask for a second ID
  - ≡ Declining to make a sale when the customer has no ID or when the ID shows the customer to be underage
  - ≡ Declining to make a sale because of concerns about whether the ID has been altered or is being misused

- ≡ Recognizing and declining a potential third-party sale, including purchase attempts made with written parental permission or with the parent present in the parked vehicle
- ≡ Declining to make a sale of smoking paraphernalia
- ≡ Resisting customer pressure and handling a customer's abusive conduct
- ^ Clear directives on when to seek additional assistance in circumstances that call for assistance from the instore supervisor (e.g., unfamiliar ID, questionable third-party sale) and that trigger contacting the police (e.g., theft, abusive behavior).
- ^ Emphasis on the special challenges associated with declining to sell tobacco to underage persons who are friends, acquaintances, and peer group members and on the techniques and methods for meeting such challenges. The trainees should practice the techniques, methods, and phrases that they should use in these situations.
- ^ Emphasis on an employee's not being required to make a tobacco sale (and being required to refuse) if there is any question that doing so would violate the laws or company policies on youth access to tobacco.
- ^ Written test to establish that the employee has the knowledge required to perform in accordance with the laws and company policies on youth access to tobacco. These tests should be retained by the employer. The training also should include testing in the form of role plays to ensure that the employee can perform properly. Supplemental training should be provided to remedy any weaknesses identified by such testing before the employee assumes responsibilities for tobacco sales.
- ^ Written acknowledgment (if not already obtained) by each new employee that he or she has read and understands the policy statements and other information provided, will follow these policies, and will refrain from selling tobacco products to minors. The employer can document who attended the training if union rules preclude new employees from signing an acknowledgment.

## **Retraining**

Employees who have responsibilities related to tobacco sales but are not new hires should receive additional training periodically (no less frequently than every 6 months) to ensure that they maintain the requisite knowledge, skill, and motivation. At a minimum, this training should include the following components:

- ^ A review of the applicable laws and the company's written policies on sales to minors

- ^ An updated review of performance by the company and the particular outlet on compliance checks, internal and otherwise
- ^ A discussion of performance goals for specific compliance checks and ways to attain those goals

On completion of such training, each employee should be required to sign an acknowledgment that he or she has read and understands the policy statements and other information provided. In addition to periodically scheduled retraining for all employees, any employee who is observed by store supervisors to depart from the store's prescribed tobacco sales protocols should be immediately retrained in the improperly followed protocol (see "Supervisory Policies" below).

#### DISCUSSION

Many large retail chains have developed tobacco (and alcohol) training curricula that are delivered to new employees through written modules, video tapes, and computer-based interactive programs. Small chains and independent retailers, which may lack the budgetary means and expertise to develop a comprehensive responsible-retailing program, may rely on external resources for training. Several States have developed State-specific training programs, such as Florida's "Slashing Underage Sales II," offered through a video of a tobacco retailers training kit and as a Web-based training program (<http://www.state.fl.us/dbprttp/main.htm>), and Maine's new retailer-training program, "No Buts."

Another external resource is the "We Card" program, offered by the Coalition for Responsible Tobacco Retailing, a joint effort of national retail associations and the tobacco industry. The program is available in kit form (training video, facilitator guide, employee guide, signage, and calendar) and as 2-hour training programs conducted throughout the country.

One source of contention among responsible-retailing stakeholders has been whether a component on the health consequences of tobacco use and adolescent tobacco addiction in particular should be included in responsible-retailing training. Programs developed in Massachusetts (Tobacco Retailer Responsibility Training) and in Minnesota have stressed the health consequences of tobacco use in general and adolescent tobacco use in particular. The "No Buts" video training program developed by Maine explicitly tells clerks that "we are going to talk to you about the crucial role you play and the responsibility you have in stemming the crisis

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of underage smoking in our State." Retailers, however, have consistently maintained that they and their employees should not be cast in the role of public health agents. (Indeed, the sale of tobacco is at some level inconsistent with preventing tobacco addiction and tobacco-induced disease.) Their obligation, retailers assert, is to sell the product lawfully, not to prevent tobacco use by adolescents or adults. Nevertheless, it appears to be a reasonable, if untested, hypothesis that clerks who sell tobacco and supervisory personnel may be more likely to follow responsible-retailing protocols consistently if (1) they recognize the serious public health issues that give rise to these laws, enforcement programs, and store policies and (2) they appreciate the expectation within their communities that all employees of tobacco permit holders will regard responsible-retailing protocols as important priorities. (See "Community-Based Model: Responsible-Retailing Coalitions," below, for a discussion of these connections between retailers and community public health concerns.)

## Point-of-Sale Practices

### Signage

In addition to meeting whatever signage and posting requirements or restrictions may be identified in local, State, or Federal law, signs should be posted on each store entrance and at each cash register where tobacco is sold. Signs also should be posted at each tobacco product display, indicating the minimum lawful age for a person to purchase tobacco products and that the store will ask for an ID from any person appearing to be a particular age (often 26 or higher).

#### DISCUSSION

Although all States stipulate a minimum age to purchase tobacco, most State laws are silent on the age that should trigger age verification. The FDA regulations required merchants to inspect the ID of any tobacco customer except those  $\hat{=}$ over the age of 26. $\hat{=}$  Although the regulations are no longer in force, most retailers have retained this language as a standard. Some businesses, especially those that also sell alcoholic beverages, stipulate a higher age.

Some anecdotal reports from retailers and law enforcement agencies suggest that signs proclaiming a store's aggressive ID policies will themselves dissuade minors from attempted purchases—particularly if the age-verification policy includes electronic age verification. In Leon County, Florida, the county sheriff's office used a picture of handcuffs on a sign intended to prevent purchases of alcohol by minors. The Illinois Liquor Control Commission provided

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retailers with humorous, comic book-style signage to announce a policy of requesting IDs (for example,  $\hat{=}$ We I.D. for tobacco products because it's the law. Getting a good laugh from your license picture is just an added bonus. $\hat{=}$ )

Research has not yet validated if signage has an impact on clerk behavior. An earlier study of  $\hat{=}$ It's the Law $\hat{=}$  showed that displaying the program's signage had no effect on retailer violation rates (DiFranza and Brown 1992).

One interesting use of signage, from Beeline Convenience Stores in Alabama, is intended to influence both clerks and customers. A large sign (day-glow lime green with large black lettering) outside the front door informs the public that if a customer is under 30 years of age and *not* asked for an ID by the clerk when buying alcohol or tobacco, the customer is to be given a free baseball cap or a refillable coffee mug. The store ownership challenged all the employees to avoid having to give out this premium. This program enlists the aid of the public in reminding the employee to ask for IDs. It also informs the public that being carded is not a capricious action of the clerk but a job requirement.

Some retailers and governmental agencies use signs to help prevent third-party sales. For example, the following sign has recently been placed at retail tobacco locations in Washington State:  $\hat{=}$ NOTICE: We do not sell tobacco to minors. Please help us by not buying for them. \$5,000 penalty for buying tobacco for a minor. $\hat{=}$

### Inspect IDs

Any customer wishing to purchase a tobacco product who does not appear to be over the age of 26 (or higher) should be asked to present an acceptable form of valid picture ID. The employee should visually inspect the ID to determine if it is authentic and if it belongs to the customer,

employing the protocols established by the retailer (see <sup>△</sup>Training<sup>△</sup> above). If in doubt about the validity of the ID or whether it belongs to the customer, the clerk should be instructed to ask for a second verifying piece of identification to support the information on the primary ID.

### **Specialty Calendars**

To ensure that the necessary calculations to determine age can be made easily and reliably, employees with responsibility for selling tobacco should be provided with immediately accessible specialty calendars (indicating that a sale can be made only if the customer is born <sup>△</sup>on or before this date in the year 19\_\_<sup>△</sup>) or comparable devices. These items should be available at each register.

## Checkout Scanners

Whenever possible, checkout registers should be programmed to recognize a tobacco (or other age-restricted) product and to prompt specific clerk actions to consummate the sale. Examples of such specific actions are prompts to the clerk on the cash register screen to verify age, enter the date of birth information appearing on the customer's valid ID, and scan the ID electronically.

## Electronic Age Verification Devices

When checkout systems are not programmable, employees can use a discrete EAV device to calculate age electronically and authenticate that the information encoded on the back of the ID matches the information that appears on the front. Employees should request the ID from every customer appearing to be age 26 or younger (or other age-verification protocol) and swipe the ID through the EAV device.

### DISCUSSION

In compliance testing in California, Florida, and Pennsylvania, a significant percentage of illegal sales occurred when clerks requested IDs that showed the customer to be a minor. The failure of clerks to determine age correctly from a tendered ID occurs for a variety of reasons, such as poor concentration and math skills; the mistaken presumption that a customer with an ID must, indeed, be of legal age; and multiple demands on the clerks' attention, especially when checkout lines are crowded. Clerks also can be confused by the different requirements on some age-restricted products (e.g., alcohol, adult magazines, lottery tickets) and will improperly sell an age-restricted product because they are confused by the age required to purchase another. Furthermore, a clerk's attitude toward adolescent smoking may be a significant factor in selling to a minor (as in, if an adolescent already smokes, why not sell tobacco to him or her).

Specialty calendars placed at the cash register help clerks to verify age by comparing the date of birth on the ID with the specialty calendar date rather than by calculating current age from date of birth. Specialty calendars are available from the "We Card" program and from some State tobacco enforcement agencies.

Electronic age verification (EAV) employs technology similar to credit card and ATM card scanning to read the date of birth and other data encoded on the customer's driver's license and to calculate whether the person to whom the ID was issued is of legal age to purchase tobacco or alcohol products. EAV has been included in more sophisticated computer-based point-of-sale cash register systems (such as that used by the Southland Corp. in its 7-Eleven stores) and could be added to other point-of-sale systems with the addition of laser scanners and/or software. In

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some grocery store chains, scanning the bar code on a product with age-related sales restrictions produces a light-emitting diode (LED) display. The display prompts the cashier either to verify the customer's age (electronic prompting) or to input the customer's date of birth. Some systems then use the date of birth to calculate the age of the consumer (electronic calculation). EAV technology is also available in freestanding EAV devices. The devices read the data encoded on the magnetic stripe and/or bar code on the back of the ID, calculate the age of the license holder, and display the age of the cardholder and/or whether the cardholder is old enough to purchase tobacco or alcohol products. More expensive EAV devices have additional capabilities, such as the ability to store the data contained on the ID in electronic memory, print

raw data or reports, and transfer data electronically. These devices raise privacy issues, and public agencies may be reluctant to sanction the use of devices that capture this information. However, EAV devices that record tobacco and alcohol transactions provide retailers with an "affirmative defense" in complaints arising from illegal sales to minors in Connecticut and New York.

A 1998 pilot demonstration by the Florida Department of Business and Professional Regulation in Panama City during spring break showed that EAV devices were able to read encoded data accurately and calculate age for purchasers and consumers of alcoholic beverages in retail stores and bars (Myers 1999). Still unclear is the question of effectiveness: Will EAV technology be used correctly and with sufficient frequency so as to improve age verification? A recent field-effectiveness study of EAV devices in Tallahassee, Florida, and Iowa City, Iowa (Krevor and Capitman 2002), showed that EAV devices initially were used with high frequency but that frequency of use declined sharply over time. The mere introduction of EAV devices did not lead to higher rates of age verification than for control stores. The study posits that EAVs may well prove effective if their use includes standardized clerk training in EAV operation and the express commitment and reinforcement of store management as part of an overall system of responsible retailing. If these challenges to EAV effectiveness can be overcome, the States will have to address additional questions of uniformity of data encryption on State IDs. (Only 33 States encode the date-of-birth data on the driver's license on magnetic stripes, on bar codes [1 or 2 dimensional], or on both.)

EAV technology, however, does not verify if a valid ID belongs to the customer who presents it. Minors will frequently use a borrowed ID to purchase tobacco (DiFranza and Coleman, in press), and even with EAV technology, sales clerks must inspect the ID and confirm that the picture and the information on age, height, and hair color match the customer who presents the ID.

## **All Sales To Be Clerk Assisted: No Vending Machines or Self-Service Displays**

### **DISCUSSION**

Vending machines are a source of tobacco products for younger adolescents (Forster et al. 1989), and because the machines are typically unsupervised, young buyers are able to obtain tobacco products at very high rates (DiFranza et al. 2001). Although vending machines equipped with lockout devices require an operator to activate the circuit to dispense the product, studies have shown unacceptable compliance rates even with lockout devices (DiFranza et al. 1996; Forster et al. 1992). In addition to posing difficulties in supervision for onsite employees, vending machines pose difficulties for enforcement agents because the machines can be moved and therefore are difficult to track. It is often unclear whether accountability for illegal sales resides with the owner of the machine, the owner of the property, or the person who is supposed to be watching the vending machine.

Self-service tobacco displays pose two serious problems related to youth access to tobacco. One problem is shoplifting. In a Wisconsin study, almost half of the 8th- and 10th-grade smokers had shoplifted tobacco in the previous year, and shoplifting was the primary source of tobacco for 12 percent of smokers (Cismoski and Sheridan 1994). A study in California showed that shoplifting was the primary source for 9.3 percent of students who used tobacco (Willey et al. 1995). The volume of tobacco shoplifting, moreover, has been shown in another study to be directly proportional to the number of self-service displays, including those on the counter (Caldwell et al. 1996).

The second problem is that the self-service displays make it more likely that an illegal sale will take place. Statewide data in Massachusetts revealed an illegal sales rate from self-service displays of 37 percent compared with 24 percent for clerk-assisted sales (DiFranza et al. 2001). With self-service, the customer does not have to talk to the sales clerk, and the clerk has less opportunity to size up the customer. Some youths simply throw money on the counter and bolt for the door after they have grabbed a pack of cigarettes.

## **Video Cameras at Checkout Counters**

Businesses that have one or more security cameras at the cash register should continuously videotape sales transactions. A clear and conspicuous sign should be displayed at or near the cash register informing customers that security cameras are in use.

**DISCUSSION**

Video cameras are frequently employed at checkout counters as part of store security and serve an important function in responsible-retailing programs. The presence of a video camera offers clerks a means of resisting pressure from minors who want to buy tobacco products without a valid ID. The clerks can point to the camera and say, "If I sell you tobacco, I could lose my job!" The presence of a video camera also can dissuade clerks from selling tobacco to minors whom they know. The deterrent value of video cameras will be enhanced if store managers review videotapes periodically and discuss specific tobacco transactions with clerks to complement and reinforce appropriate behavior or to correct a failure to observe proper age-verification protocol (see "Supervisory Policies" below).

**Unusual Occurrence Log**

When a sales clerk observes unusual occurrences concerning the attempted purchase of tobacco products he or she should record certain information in a log: date and time of day, name or description of customer, and details of the occurrence, including whether a sale was made. This log will remain on the premises to be reviewed by the following shifts and store management.

**DISCUSSION**

The unusual occurrence log serves several purposes. It allows the on-duty sales clerk to record suspicious events related to the attempted purchase of tobacco products by a person under 18 years of age so that this information can be passed on to the supervisor (who should review the log daily) and to oncoming shifts (who should review the log at the beginning of their shifts). This way, information about purchase attempts, third-party purchase attempts, and attempted false ID use can be shared with other employees to protect them from future purchase attempts by those particular underage purchasers and methods. The log also can be used as a tool to reinforce proper actions and behavior by retail clerks. By recording the information in the log, the employee is able to affirm his or her actions and have those actions reinforced by a supervisor. In addition, management can use the log as a training tool to demonstrate proper performance, and the log can serve as a tool to assess the risk of underage sales at that location by documenting the frequency of purchase attempts by minors. If underage customers make frequent attempts to purchase tobacco at one store, it may suggest that they think a clerk at the store will sell to minors. Finally, the unusual occurrence log will serve as a due diligence document if charges are ever brought whereby the licensee shows actions taken to reduce the possibility of sales to minors. Simply entering the occurrence in the log, however, does not justify an obvious illegal sale.

***Supervisory Policies***

For public agents who conduct retailer inspections, protestations from managers of noncompliant stores, such as "I told [the noncompliant clerk] NOT to sell to anyone without a valid ID!" are common. Clerks tend not to apply the procedures they were initially trained to follow, even when those instructions were detailed and explicit. Managers who fail to supervise tobacco sales practices and reinforce proper procedures bear much of the responsibility for noncompliance. Monitoring the behavior of sales clerks and reinforcing the content and importance of responsible-retailing practices are management responsibilities. Effective supervision will protect both the store and its employees.

## Supervision and Accountability

Each newly hired or promoted supervisor should receive intensive training on the hiring, training, and retraining protocols discussed earlier; the company's philosophy on illegal sales to minors; and the methods of supervising the sale of tobacco (and other age-restricted) products. Onsite supervisors should be instructed to monitor staff compliance with sales-to-minors laws and store policies on an ongoing basis. Staff compliance with these laws and store policies should be a component of each supervisor's periodic performance review and be considered in connection with subsequent compensation, promotion, and retention decisions.

To promote accountability, systems should be in place to ensure that each person with responsibility for selling tobacco is reminded each time he or she begins a shift of the importance of performing proper ID checks for tobacco purchases. Also, retailers should implement and maintain a program of internal compliance checks designed to determine whether outlets and staff are in compliance with store policies designed to prevent illegal tobacco sales to minors. At a minimum, this program should have the following features:

- ^ An internal compliance check should be performed at varying or random times of the day at each retail outlet no less frequently than once every 6 months. Noncompliant stores should be reinspected within 14 days to ensure that remedial actions have been successful.
- ^ The internal compliance check should either use a person of legal age who should be requested to produce ID or preferably, where it is legal to do so, use a person who is under legal age to buy tobacco (i.e., a 17-year-old where the legal age is 18, an 18-year-old where the legal age is 19) to test whether IDs are being requested and whether sales are made in spite of the presentation of an underage ID.
- ^ Employees who fail the compliance test should be informed immediately, instructed on what constitutes proper compliance, and cautioned to avoid further instances of noncompliance. A noncomplying employee should be informed at the earliest practicable time of the consequences of the violation and any subsequent violations, given remedial training and testing (if the employee is being retained), and informed that he or she will be the subject of additional compliance checks in the future.
- ^ Both the employee who passes a compliance check and his or her immediate supervisor should at the earliest practicable time not only be informed of the success but also be reminded that passing a compliance test is noted in personnel records and taken into account in company decisions on compensation, promotion, and retention. The employee also should be presented with a tangible reward, such as a cash bonus or <sup>^</sup>comp<sup>^</sup> time.

Although retailers may benefit from the implementation of an internal compliance-check program, this action does not replace the need for the State and local governments to implement compliance checks to enforce State and local laws.

DISCUSSION

The attorneys general who negotiated assurances of voluntary compliance with regional and national retail chains required those chains to institute a policy of internal compliance checks. Unlike compliance checks conducted by government agencies to enforce State and local laws, internal compliance checks should be seen as a mirror that reflects to store management the degree to which training and supervisory programs have been successful. Whereas inspections by a public agency determine whether an illegal sale is made to a minor, internal compliance checks provide detailed information on the degree to which specific company policies are followed, the effectiveness of those policies in establishing positive age verification for young customers who seek to purchase tobacco products, and areas for improvement and reinforcement. For example, a clerk may ask, "Are you 18?" and receive a truthful "No" from a minor in an external compliance check. Assuming the clerk then declined to make the sale, the inspection would show the clerk, and the store, to have passed. However the clerk would not have followed a store policy that may require clerks to request and inspect an ID for every customer appearing to be age 26 or younger. Since many adolescent smokers misrepresent their age as 18 or older, such laxity might well result in a sale to a minor who claims to be 18.

### Use of Videotapes

In all outlets that have one or more security cameras that videotape transactions at the cash register, the company should adopt certain policies and procedures. Supervisory personnel should periodically review the tapes to monitor employees' compliance with sales-to-minors laws and store policies. The review should cover a sufficient number of tobacco sales transactions involving young customers to permit a realistic assessment of whether the employee is in compliance. Such reviews should be conducted in a manner that does not permit an employee to predict which shifts or transactions are likely to be reviewed. Closed-circuit TV systems that "time stamp" transactions and display the date of birth when that information must be entered into the cash register increase the value and ease of use of videotapes.

Soon after each review, the supervisor should meet with the employee to inform him or her that a review was performed and discuss the employee's performance. Employees who performed well should be commended. If the review indicates that an employee failed to comply with sales-to-minors laws and company policies, the employee should be informed of the consequences of the violation and any subsequent violations and given remedial training and testing (if the employee is being retained).

#### DISCUSSION

The presence of video cameras gives sales clerks a simple and effective means to resist pressure to sell to a minor: Pointing to the video camera, the clerk can say, "I'll lose my job!" Similarly, the videotapes give store managers a supervisory tool to observe the practices of their sales clerks. One special problem faced by retailers is the willful collusion between some clerks and underage customers in violating store policies and selling tobacco to minors. Many of the best practices described in this report are means of preventing the inadvertent sale of tobacco to minors, but recent research discloses that some clerks typically minors themselves conspire to sell tobacco. Focus groups with adolescent smokers reveal that clerks from whom they purchase tobacco willfully violate laws and store policies (DiFranza and Coleman, in press). Clerks and underage

customers may even play out a ruse for store management of inspecting an ID or of ringing up a different product to avoid a scanner lockout.

A periodic review of the videotape may help forestall this problem, especially when product-scanning information that appears on the register is printed to the videotape and can be reviewed by management.

## ***Employee Policies***

Companies should establish employee incentives and disincentives to reinforce company policies on tobacco sales to young customers. Incentive programs can promote increased adoption and practice of these policies by employees who sell tobacco products or supervise the sale of tobacco products by others. For example, companies should provide incentives, such as a cash award or employee benefit, for individual clerks who refuse to sell tobacco to a minor during compliance checks and consider incentives for all store employees when clerks refuse to sell tobacco to a minor during checks. Also, employees who follow policies in stores and regions with high retailer violation rates can be commended in the company newsletter.

Companies should establish disincentives for clerks who sell tobacco to a minor during compliance checks and for all store personnel when an individual clerk sells tobacco to a minor during checks. These disincentives may include repeating the training for new hires, attending a noncompany responsible-retailing program, and suspension without pay.

### **DISCUSSION**

The policies of Store 24, a Northeast convenience store chain, illustrate (dis)incentives for all employees of a single store to work together to prevent illegal sales to minors. Store 24 links employee bonuses to compliance. If an employee sells tobacco to a minor during either a company-arranged mystery shopper inspection or a compliance inspection by a public agency, all the employees of that store lose part of their quarterly bonuses. For a manager, this can be as much as 5 percent of his or her compensation.

The Williamson Oil Company, owners of a number of convenience stores in Alabama, conducts the "I Got Caught Carding" incentive program, which is an extension of the company's mystery shopper program. If a clerk properly asks and checks for age, he or she is given a baseball cap and T-shirt with the wording "I Got Caught Carding" and is asked to wear the items to work as often as possible. The clerk is also given a small monetary reward.

In addition to rewarding good sales practices and showing retailer commitment to preventing illegal sales, the program provides an added educational benefit. Customers are very curious about the slogan and ask the clerks about it. Their explanations reinforce the importance of preventing illegal sales through positive age-verification protocols.

Some retailers have adopted a policy of terminating any employee, including store managers, who sells tobacco to a minor in a compliance check—even if the inspection is an internal check that does not result in a citation from an enforcement agency. Other retailers retrain employees and apply disincentives, such as suspension without pay, in hopes of retaining experienced employees.

## **Public Sector Component**

## ***Role of Public Agencies***

In 1998 and 2000, working groups of attorneys general launched inquiries into illegal tobacco sales to minors by national and regional tobacco retailers. The attorneys selected retail chains from different segments of the tobacco-retailing marketplace that had demonstrated below-average retailer violation rates in FDA inspections. The attorneys discovered that many of these chains had already adopted policies identified earlier in *No Sale: Youth, Tobacco and Responsible Retailing* (Working Group of State Attorneys General 1994) as potential remedies for recurring violations of sales-to-minors laws. These policies, however, were often not specific enough, or enforced enough, to have been implemented throughout the chains and assimilated into everyday store practice. The investigations by the attorneys general revealed the glaring disconnection between formal policies adopted at the corporate level and actual practices at the level of individual stores and cash registers.

The best practices described in the previous section of this report can be seen as technologies for responsible retailing, such as electronic technologies for reading IDs and calculating age, interpersonal technologies for interacting with customers in ways that reduce conflict, and managerial technologies for monitoring point-of-sale conduct. Technologies are only effective if they are widely adopted and employed as intended, and the challenge to effective responsible retailing is not only one of identifying and enacting specific protocols to follow but also one of integrating those protocols into organizational behavior.

The public sector has a vital and indispensable role in bringing about these organizational changes. That role has two components: *insisting* that retailers effect changes to improve compliance with sales-to-minors laws (through sustained enforcement programs) and *assisting* retailers in implementing these changes. Enforcement is the driving force for responsible retailing that impels retailers to alter their internal practices to produce higher retailer compliance rates. The public sector must also find ways of assisting the retailer community to identify and adopt responsible-retailing technology and to effect organizational change.

### ***Community-Based Model: Responsible-Retailing Coalitions***

A model that embodies the public sector's role in insisting and assisting is the responsible-retailing coalition, which considers retailers, law enforcement, public health agencies, and community organizations partners in protecting youth against the health consequences of tobacco dependency. In these community coalitions, the partners use a problem-solving approach in adopting responsible-retailing technologies and ensuring their successful integration into retail practice.

Moreover, through communication and a risk assessment approach, responsible-retailing coalitions are able to focus on the barriers that impede effective community-wide implementation of compliance rather than on individual violations. Similarly structured multicomponent community interventions (e.g., Communities Mobilizing for Change on Alcohol) which have engaged retailers, public institutions, and community leaders in

Minnesota and western Wisconsin have successfully lowered youth access to commercial sources of alcohol (Wagenaar et al. 2000).

Enforcement and public safety agencies will recognize this responsible-retailing model as an adaptation of another familiar model: community policing. Rigorous enforcement of laws and regulations is indispensable for achieving high compliance, but relying only on punitive measures against noncompliant companies produces limited gains. Community policing brings public safety and enforcement agents into a direct dialog with the regulated industry and the broader community to identify the problems and barriers to high compliance from the perspectives of all the affected stakeholders. Responsible-retailing coalitions can be an extension of this community-policing model.

## ***Role of Community Coalitions***

### **Catalyze Community Support**

Whether responsible-retailing training programs for clerks and managers should contain information on the health consequences of adolescent tobacco use (see <sup>^</sup>Knowledge Gaps<sup>^</sup> in the appendix) has been a point of contention among responsible-retailing stakeholders. However, there can be no argument that the reason for these youth-access-to-tobacco laws, and the enforcement programs that support them, is the public health imperative to reduce adolescent tobacco addiction. The public health concerns are clearly the basis for bringing together retailers, enforcers, and public health and community organizations. The responsible-retailing coalition regards the retailer not only as a compliant or noncompliant licensee but as a corporate citizen, a part of the community concerned about the health and welfare of its youth. Given the high turnover among clerks, and the additional adolescents that progress every day from occasional use to regular purchases of tobacco products, a coalition of community stakeholders is a means to sustain the continuous effort that an effective responsible-retailing program requires.

### **Provide Resources**

A number of retail chains have the internal resources to identify and establish responsible-retailing practices, and some have done so. Other retailers, of necessity, may depend on external resources to implement the best practice technologies discussed in the previous sections. The following are examples of internal and external resources:

- <sup>^</sup> Summaries of local and State laws pertaining to the sale of tobacco products to minors, including penalties for clerks and permit holders
- <sup>^</sup> Identification of best practices
- <sup>^</sup> Examination of minimum and maximum standards appropriate to the community
- <sup>^</sup> Log of noncompliant clerks, when available, for use in background checks
- <sup>^</sup> Acknowledgments of laws and responsibilities that can be signed by employees
- <sup>^</sup> Signage
- <sup>^</sup> Specialty calendars
- <sup>^</sup> EAV technology
- <sup>^</sup> Training for clerks, managers, and owners including role playing and interpersonal customer skills

- ^ Mechanism to report compliance results for individual stores, for all stores by category, and for the community as a whole, with State comparisons when available

Through the combined efforts of their public and private stakeholders, community coalitions are able to identify external resources (such as those provided by the <sup>^</sup>We Card<sup>^</sup> program or some State agencies) or furnish these resources themselves.

### **Provide Additional Feedback to Retailers**

Community coalitions can augment the number of compliance inspections performed by enforcement agencies and provide additional information to retailers. Frequent compliance inspections provide detailed information on whether age-verification practices are in place and consistently applied in retail outlets and tell retailers how successful they have been in instructing, reinforcing, and supervising the employees responsible for selling tobacco products. When enforcement agencies are limited in their ability to conduct formal inspections, coalitions can arrange for more frequent inspections through retailer-initiated mystery shopper inspections or through inspections arranged by voluntary health societies or other coalition partners. Coalitions also can enlist the help of adolescents, who are valuable partners, in providing information on the ease and preferred means among underage customers of obtaining tobacco products.

### **Overcome Barriers to Responsible Retailing**

Effective responsible-retailing programs face the following formidable barriers that require the cooperation of coalition partners to overcome:

- ^ **Work Force Issues.** Turnover rates among sales clerks are high, particularly in gas stations and convenience stores. Clerks with little commitment to their jobs or employers may not be highly motivated to follow company policies, especially when selling tobacco to a potentially underage customer is less confrontational than adhering to an age-verification process. The fallibility of store personnel, which can be intensified when stores are crowded and lines at registers are long, further impedes effective responsible retailing. As Jan Byrne, the Education Coordinator of the Alabama Alcoholic Beverage Control Board, explains, <sup>^</sup>We tell retailers that, in terms of compliance, your store is only as strong as the worst clerk during the worst five minutes of the day.<sup>^</sup> Underage tobacco users learn which clerks will sell to them and which shifts they work (DiFranza and Coleman, in press). Coalitions can alert retailers to these potential problems.
- ^ **Limited Enforcement Resources.** Merchant education alone or the passage of laws alone (or with merchant education) has only modest effects on retailer violation rates. Enforcement of State and local sales-to-minors laws, however, dramatically increases compliance rates, and graduated penalties and potential permit suspension or revocation stimulate retailers to focus on remedial steps to forestall future infractions. Enforcement agencies have seldom conducted compliance inspections frequently enough to alter clerk behavior directly: Indeed, because of high turnover, a significant number of sales clerks

would have no memory of, or direct benefit from, earlier inspections. Accordingly, enforcement agencies must rely on retailers to train and supervise all clerks in responsible-retailing protocols.

^ **Resourcefulness of Adolescent Tobacco Users.** One limitation of supply-side youth-access-to-tobacco interventions is that only one or two retailers in a community might serve as adequate commercial sources of tobacco for adolescent smokers. In fact, aggressive responsible-retailing programs by some retailers may simply displace illegal sales to other, less compliant stores. Although high retailer violation rates indicate that minors' access to tobacco has been curtailed, they do not assure that minors' ability to acquire tobacco has been obstructed or community norms that shun tobacco sales to minors have been expressed and affirmed. Responsible-retailing coalitions, particularly those that include youth representation, are better able to identify actual youth acquisition patterns within the community and pursue a problem-solving approach for the small number of noncompliant retailers.

**DISCUSSION**

Two States have developed comprehensive responsible-retailing programs: Pennsylvania and Maine.

II **Pennsylvania.** The Pennsylvania Responsible Tobacco Sale Certification Program is a model of public-private partnership that is administered primarily by the private sector. The program is a joint effort of the Pennsylvania Department of Public Health, the Office of the Attorney General, retailers, and public health advocates and is administered by the Pennsylvania Food Merchants Association. Participating merchants agree to follow specified responsible-retailing protocols for training, supervision, point-of-sale behavior, and advertising and are inspected by the program inspectors. Inspection teams, including youth between the ages of 15 and 17, conduct unannounced in-store compliance checks to measure the merchants' compliance with program requirements. Stores that meet all program requirements receive a certificate and decals that publicly announce the stores have satisfied high standards in the administration of the Responsible Tobacco Sale Certification Program.

^ **Maine.** The "No Buts" responsible-retailing program is a model of public-private partnership that is administered primarily by the public sector. The "No Buts" program was developed by the Partnership for a Tobacco-Free Maine (PTM) and the Maine Office of the Attorney General. Most of the State's leading retail chains have agreed to participate, and the program has the endorsement of the Maine Grocers and Maine Merchants Associations.

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"No Buts" is a video-based training program that requires sellers to adopt responsible-retailing practices. It may be integrated into existing proprietary tobacco and alcohol training programs conducted by retail organizations or offered as a stand-alone program in regional training sessions for small retailers. The program will be introduced to local retailers by community coalitions funded by PTM. Some coalitions will further offer the employee-training component to small retailers that lack a company-sponsored training program.

"No Buts" encourages retailer participation by establishing a reward structure for stores that have trained their employees through the program's curriculum and adopted the required

practices. Retailers who enroll in and fully implement the program can earn compliance credits and receive a credit after three consecutive inspections without a violation. If a violation occurs after the retailer obtains the credit, the violation is placed on file, but no fine is imposed. If the next three consecutive inspections do not result in a sale, the violation is dismissed.

Two State liquor control boards, in Washington and Alabama, employ a community problem-solving approach for responsible tobacco retailing.

^ The Washington State Liquor Control Board (which also enforces the tobacco sales-to-minors laws) practices "Community Oriented Liquor and Tobacco enforcement" or "COLTe" (a small "e" puts increased emphasis on community problem-solving efforts before resorting to an enforcement solution). One component of "COLTe" is the Community Problem-Solving Academy, which brings both the licensee and the community representatives together to solve community problems. The academy provides a historical overview of enforcement and an examination of the societal costs of alcohol and tobacco use, along with statistics showing that the younger people are when they start drinking, smoking, or using other drugs, the more likely they are to have substance-related problems later on. The academy educates participants on the community risk-and-protective factors that can influence both sides of the problem, with the goal of educating and encouraging them to be a protective factor in their community.

^ The Alabama Alcoholic Beverage Control Board, which conducts tobacco compliance checks, also conducts the "Don't Let Your Business Go Up In Smoke" program. Local law enforcement agencies (with the approval of the mayor) and the chambers of commerce are cohosts of the retailer-training sessions. Members of a high-school substance abuse prevention club provide the training and share the tricks that their peers use to try to buy tobacco and alcohol.

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Another noteworthy model of public-private cooperation in promoting responsible-retailing practices is Nevada's partnership with the retailer community. A letter from the attorney general of Nevada encouraging merchants to comply with tobacco sales-to-minors laws has been included in retailer training kits provided by the "We Card" program, and a representative of the attorney general's office has attended live "We Card" training sessions to reinforce the importance of responsible retailing. Public and private interests cooperated in requesting a change in the Nevada driver's license, which is now clearly marked "Minor Driver (under 18)" or "Minor Driver (under 21)". The attorney general's staff meets regularly with retail groups to answer questions and minimize confusion regarding the enforcement program.

Recently, investigators for the Nevada attorney general's office began distributing a card of congratulations to all clerks who pass a compliance check, which includes a note from the attorney general and a "We Card" lapel pin. The supervisor who observes this inspection hands the preprinted card from the attorney general and the pin to the clerk. (Neither item is given to a clerk if either the safety of the youth investigator is at risk if the enforcement staff were to identify themselves or if the supervising investigator suspects that the stores are notifying each other that compliance checks are being conducted in the area.) After the compliance check, the store is sent a letter with a written report of the compliance check by the attorney general's office. If retailer training is scheduled, a flyer describing the training is included in the envelope. If a store fails the compliance check, a booklet summarizing the suggested retailer practices is included in the envelope.



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## APPENDIX

### Developing Responsible-Retailing Best Practices

#### Background on Preventing Tobacco Sales to Minors

In a 1987 test of the 100-year-old Massachusetts prohibition on the sale of tobacco products to anyone under the age of 18, Joseph DiFranza, M.D., determined that his 11-year-old daughter could purchase tobacco products from 75 of 100 central Massachusetts retailers (DiFranza et al. 1987). Researchers in other parts of the country confirmed the ease with which minors could purchase tobacco (Radecki and Zdunich 1993). In response to these reports, a number of individual communities launched policies to curtail the sale and promotion of tobacco to minors at the local level. In Woodridge, Illinois, and in communities in California, Massachusetts, and Minnesota, authorities instituted not only laws and regulations that prohibited tobacco sales to minors but also restrictions on other sales and marketing practices **II** in effect creating local authority to enforce laws not being enforced at the State level. These efforts included compliance testing as a way to enforce prohibitions on tobacco sales to minors (DiFranza et al. 1998).

Above and beyond the legal mandate to enforce State and local laws, enforcement programs are envisioned as achieving two additional goals: restrict youth access to tobacco and influence social norms. In restricting youth access to tobacco, the aggressive enforcement of regulations has reduced the incidence of adolescent tobacco use in several (Forster et al. 1992; Jason et al. 1999; Murray et al. 1998), but not all (Rigotti et al. 1997), communities that undertook intensive programs to enforce sales-to-minors laws.

No enforcement program is expected to prevent access to tobacco altogether: As enforcement intensifies, some adolescents will shift from commercial sources to social sources, such as friends and relatives, to obtain tobacco (DiFranza and Coleman, in press). Because all adolescents do not replace commercial sources with social sources, and because tobacco dependence and the potential for tobacco-induced disease are both greater when tobacco use begins at an early age (Breslau et al. 1993), restricting youth access to tobacco may reduce the incidence and consequences of adolescent tobacco addiction.

In influencing social norms, many tobacco control programs conducted by State and local public health departments have a primary objective of bringing about a shift in normative social values relating to tobacco use. The sale to and use of tobacco by minors are no longer seen as trivial or inconsequential actions. Instore advertising and promotions that have a strong appeal to children and adolescents **II** marketing strategies favored by the tobacco industry **II** are not acceptable. Merchants who consistently decline to make tobacco sales to minors fulfill their obligation to conduct commercial sales of tobacco lawfully. In addition, they reinforce a public perception that selling tobacco to minors (and tobacco use by minors) can no longer be viewed as normal or permissible retailer behavior.

#### ***Federal Policies***

Two Federal Agencies have addressed the problem of tobacco sales to minors. One Agency is the Center for Substance Abuse Prevention (CSAP), of the Substance Abuse and Mental Health Services Administration, Department of Health and Human Services. Under the mandate of the Synar Amendment and Regulation, all States and territories are required to institute and enforce laws that prohibit tobacco sales to minors in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18 (Federal Register 1996b). The Synar Regulation requires all States to achieve a negotiated target retailer violation rate, assessed through a scientific survey of randomly selected retailers conducted by the State. All States are expected to reach the benchmark target rate of 20 percent or less by 2003 (Federal Register 1996a). States that fail to achieve their target retailer violation rates are in danger of forfeiting portions of their Federal Substance Abuse Prevention and Treatment Block Grants. CSAP provides technical assistance to the States to help them achieve these rates.

The other Agency is the U.S. Food and Drug Administration (FDA). The FDA's Regulations Restricting the Sale and Distribution of Cigarette and Smokeless Tobacco to Protect Children and Adolescents took effect on February 28, 1997 (Federal Register 1996b). The regulations prohibited the sale of tobacco products to anyone under the age of 18 and required merchants to obtain positive proof of age for any customer who appeared to be age 26 or younger. To enforce these rules, the FDA contracted with 43 States and territories to enforce the youth-access-to-tobacco provision of the regulations. Under these FDA contracts, individuals with State regulatory authority were commissioned as FDA officers and oversaw the compliance inspections. Whereas the Synar program has as one main objective the measurement of sales to minors and calls for a smaller (but statistically significant) number of inspections, the FDA contracts provided sufficient resources for large-scale enforcement of tobacco retailers, including reinspections of retailers found to be in violation of the FDA regulations (Clark et al. 2000). On March 21, 2000, however, the U.S. Supreme Court overturned the FDA regulations, and the contracts for State enforcement were terminated soon after.

### **State Policies**

A growing number of States have instituted comprehensive tobacco control programs to reduce the health consequences, economic burden, and personal toll exacted by tobacco use. State tobacco control programs have been supported through awards from Federal Agencies, earlier through the National Cancer Institute's ASSIST program and more recently through the Centers for Disease Control and Prevention (CDC); by dedicated tobacco excise taxes and allocations from settlements of State lawsuits against the tobacco industry; and by grants from The Robert Wood Johnson Foundation's SmokeLess States program.

State tobacco control programs have included enforcement of sales-to-minors laws, which the CDC's *Best Practices for State Tobacco Control* identifies as an important and essential

element of a comprehensive effort to reduce young people's use of tobacco (CDC 1999). In those few States with aggressive enforcement schemes, retailer compliance is very high.<sup>1</sup>

An additional State level policy to reduce youth access to tobacco has been adopted by attorneys general in more than 20 States. By applying their States' consumer protection laws (through which the illegal sale of an addictive and harmful product to a minor is characterized as an "unfair," "unconscionable," and "deceptive" act), these attorneys general have imposed significant financial penalties on noncompliant retailers. Their inquiries into patterns of noncompliance have led to the implementation of aggressive responsible-retailing policies for targeted noncompliant supermarket chains in an action in Massachusetts (1994) and in a tristate action by Massachusetts, New York, and Vermont against five regional chains (1998). A current coordinated action in 23 States launched in 2000 is addressing noncompliant retailer behavior among national retail chains. In their execution of consent orders and assurances of voluntary compliance negotiated with regional and national retail chains, the attorneys general have secured commitments by retailers to implement comprehensive training and supervisory practices (such as biannual retraining sessions and mystery shopper programs) and specific point-of-sale safeguards (including the use of scanner locks on cash registers and the elimination of self-service displays).

### ***Tobacco Retailer Responsibility Initiative***

In August 1997, The Robert Wood Johnson Foundation funded the Tobacco Retailer Responsibility Initiative (TRRI) to provide technical support to offices of attorneys general on preventing illegal tobacco sales to minors and to encourage leadership from the attorneys in grappling with the problems of adolescent tobacco addiction.

TRRI, which was housed at Brandeis University, conducted four regional meetings in 1999 involving attorneys general, State Sanitary inspection agencies, and FDA contractors whose purpose was to facilitate the expansion of consumer protection actions of the attorneys through collaboration with State enforcement and inspection agencies. Frank discussions with retailers from large and independent retail chains and retail associations identified two underlying problems impeding compliance with sales-to-minors laws: the complexity of age and ID verification and policy-implementation challenges.

Guesstimating the age of young customers, not surprisingly, produces inaccurate results, but determining the age of a customer from an ID also can produce inaccurate results for many clerks. Inspections in Florida, California, and Pennsylvania have shown that a significant percentage of illegal sales (30 to 40 percent) occurred when an ID was presented that showed the customer to be underage. Another verification problem is determining that the person presenting an ID is the same person to whom the ID was issued. Specific protocols at the point of sale are

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<sup>1</sup>For Federal fiscal year 2000, Louisiana reported a noncompliance rate of 6.7 percent, and Maine and Florida reported rates of 8 percent. See <http://www.samhsa.gov/centers/csap/SYNAR/01synartable.html>.

needed to assist sales clerks in quickly and accurately verifying the age of a customer and the authenticity of an ID.

Offices of the attorneys general identified significant challenges to the implementation of policies on restricting tobacco sales to minors. In investigations of retail chains found to have lower-than-average rates of compliance with sales-to-minors laws, offices of attorneys general discovered that many of these retail chains had already established explicit policies to verify age, refuse tobacco sales to minors, and penalize employees who violated these policies. Nevertheless, these policies were not being implemented consistently in stores, as indicated by low retailer violation rates. In addition to acquiring and training clerks in the *technology* of how and when to verify age and ID authenticity, retailers face a challenge of organizational change: how to adopt, consistently use, and establish accountability for these responsible-retailing policies throughout a retail organization. With the high turnover of sales clerks in many retail organizations, the training and supervision of employees is particularly difficult and important.

National stakeholders in responsible tobacco retailing participated in a TRRI meeting that was hosted by CDC at its Washington, D.C., office on March 22, 2000 (ironically, the meeting began the morning after the Supreme Court overturned the FDA regulations), to explore the desirability and feasibility of identifying and implementing best practices for responsible retailing. In that meeting, and in the November 2000 report of the meeting's ad hoc work group, the stakeholders recommended that an objective, academic report be developed on best practices for responsible retailing to assess the current technology of responsible retailing and establish a context for considering potential implementation strategies involving the entire range of stakeholders. CSAP assumed a leadership role for that effort by commissioning this report.

## **How This Report Was Developed**

At least two prior efforts have examined questions of responsible tobacco retailing. The Pacific Institute for Research and Evaluation, acting under a technical assistance contract with CSAP, reviewed studies on the impact of earlier youth access policies: merchant education programs and the passage and enforcement of sales-to-minors laws. These studies revealed that merchant education alone and the passage of sales-to-minors laws alone have only a marginal impact on retailer violation rates (Altman et al. 1991), whereas the enforcement of sales-to-minors laws has significant impact (Jason et al. 1991). More recently, CDC's Task Force on Community Preventive Services has turned its attention to published evidence of efficacy for responsible retailing. Although retailer violation rates have risen dramatically, virtually no research studies have focused on the degree to which specific responsible-retailing measures—individually or as part of a comprehensive program—affect compliance.

In the absence of scientific investigations of responsible-retailing programs as a whole, or of their constituent parts, the committee for this report instead turned toward three alternate sources of evidence: reports on responsible retailing, actual responsible-retailing programs, and negotiated agreements between attorneys general and retailers.

## Reports

- ^ ***No Sale: Youth, Tobacco and Responsible Retailing*** (Working Group of State Attorneys General 1994). This report assessed how the retail industry was addressing the problems of tobacco sales to minors. The report outlined 10 specific recommendations for legislators (including licensing and penalty structures that support compliance enforcement programs) and 10 for retailers (see the appendix). The retailer recommendations included the use of mystery shopper programs, electronic technology, age-verification protocols, and the elimination of self-service displays and instore advertisements and promotional items.
- ^ ***Preventing Teenage Access to Tobacco*** (Tobacco Retailer Responsibility Initiative 1999). This report to the National Association of Attorneys General summarized the research on youth access to tobacco and examined the application by attorneys general of consumer protection authority to illegal tobacco sales to minors, the opportunity for collaboration among State agencies, and the use of emerging electronic technologies at the point of sale.

## Programs

Many States have developed educational materials for retailers that explain State laws and enforcement policies for preventing tobacco sales to minors. Some materials provide information on responsible-retailing practices, store signage, and specialty calendars. Florida and Maine have developed training programs for retailers and their employees.

Florida's "Slashing Underage Sales" program is offered through a retailer kit (with a training video for employees, signage, and a specialty calendar) and via the Internet. Maine's "No Buts" program is a voluntary program for retailers who agree to adopt identified responsible-retailing practices, including a written tobacco sales policy, hiring and training practices, and using some of the store items provided in the retailer's kit. The Alabama Alcoholic Beverage Control Board administers a legislatively mandated responsible vendor program that has been expanded to include tobacco. First-time violators of the tobacco sales law in Alabama are offered training developed by the board.

Many large and medium-size retail chains have developed formal training programs to teach protocols for the sale of tobacco to minors. Apart from these proprietary training programs, the most widely used private sector training program is the "We Card" program, developed and supported by the Coalition for Responsible Tobacco Retailing, a coalition of tobacco manufacturers and national retail associations. The program is available in kit form (training video, facilitator guide, employee guide, signage, and specialty calendar), which has been distributed to 800,000 retailers. A 2-hour training program has reportedly been attended by more than 55,600 retailers in 1,100 sessions throughout the country. The "We Card" video and 2-hour training present appropriate ways of requesting IDs and verifying age and include role-playing skills for cashiers. The program emphasizes customer-interaction skills, recognizing that the fear of confrontation is a key factor in the failure of sales personnel to request IDs and to decline tobacco sales to minors.

The “We Card” program does not, however, address the health consequences of tobacco use or teenage addiction to tobacco. This omission, along with the tobacco industry support of the program, has been the principal criticism of the program by public health organizations. The “We Card” program is not State specific, and therefore clerks are neither trained in specific State and local laws and regulations nor the explicit consequences for sales personnel who sell tobacco to minors.

Responsible-retailing initiatives for preventing tobacco sales to minors have been developed jointly by public agencies and retail associations. In Nevada, the attorney general’s office has worked with retailers and associations to sponsor training and to change the State driver’s license so that the words “Minor Driver (Under 18)” or “Minor Driver (Under 21)” are clearly marked on the license. In Pennsylvania, the Department of Public Health and the attorney general have collaborated with retailers to produce the Pennsylvania Responsible Tobacco Sales Certification Program, in which all participating retailers agree to adopt specified responsible-retailing practices and permit mystery shopper programs to provide feedback.

Currently, few States have mandated or recommended responsible-retailing programs for tobacco sales, although some States have mandatory or voluntary programs for the sale of beverage alcohol. These alcohol sales programs have a variety of components, such as specified training requirements, proactive management practices, and the placement of warning signs inside and outside the business. Most States that require or request compliance with such a program offer incentives, including the reduction of fines and the reduction or elimination of license suspensions and revocations. In some cases, alcoholic beverage licensees are able to receive a discount in their liability insurance rates for a record of compliance. These programs offer some insights for the development of programs for the responsible retailing of tobacco.

### ***Negotiated Agreements***

State attorneys general have taken various actions to reduce youth access to tobacco products through retail locations. Among these are assurances of discontinuance and assurances of voluntary compliance, consent orders, and the tobacco retailing practices document (Working Group of State Attorneys General 1994).

- ^ **Assurances of Discontinuance With Shell Oil Company et al. 1998.** Citing their authority under their States’ consumer protection authority, the attorneys general of Massachusetts, New York, and Vermont entered into a voluntary assurance of discontinuance with four regional chains (and a fifth in New York) found to have been noncompliant with tobacco sales-to-minors laws. These assurances outline specific measures that the signatory chains are obligated to adopt concerning the training and supervision of employees who sell tobacco and to point-of-sale practices. Included were the use of electronic scanner locks and daily electronic cash register reminders at the beginning of each shift and the elimination of self-service displays. Signatory chains additionally agreed to voluntary contributions ranging from \$50,000 to \$150,000 to fund tobacco youth-prevention programs.

^ **Maine Consent Orders.** Violations of Maine's sales-to-minors laws are referred to the Maine attorney general, whose office initiates actions against noncompliant retailers. Consent orders have required retailers to conduct and report monthly internal mystery shopper inspections, to eliminate exterior or exterior-facing tobacco advertising, to screen applicants for past violations of sales-to-minors laws, and to employ electronic age verification and video surveillance cameras.

II **Tobacco Responsibility Practices.** This working document by the current work group of 22 offices of attorneys general expands the responsible-retailing protocols of earlier attorney general actions in 1996-98. The document examines hiring practices (including screening for prior violations of sales-to-minors laws), specific content of training (what sales clerks and supervisors should be trained to do), and delivery of training (for example, requiring role playing for newly hired clerks and retraining of other employees).

## Report Committee

The report committee comprised national experts drawn from law enforcement and inspection agencies, offices of attorneys general, public health agencies, academia, and retail organizations and associations. In developing this report on best practices for responsible retailing, committee members identified and synthesized best practices drawn from the reports discussed above, responsible-retailing programs, and negotiated agreements. Although the committee included a wide range of stakeholders involved in tobacco retailing, the best practices contained in this report are based on public health criteria and do not necessarily reflect other political and economic factors that might affect implementation. A group of outside readers, reflecting the full range of stakeholders, reviewed a draft of this report.

## Knowledge Gaps

The identification and adoption of practices to eliminate tobacco sales to minors are inhibited by a dearth of research on the effectiveness of responsible retailing. The report committee considered the following questions and identified the following issues as knowledge gaps deserving of investigation and scientific research.

^ Should responsible-retailer training programs contain health content on the consequences of tobacco use?

This report discusses the position of many health advocates that the health consequences of tobacco use should be included in employee training. These health implications provide a compelling reason why responsible-retailing policies should be followed thoroughly and consistently, and the omission of health content in industry training programs (most noticeably the We Card program) is a serious enough deficiency to withhold any recommendations, explicit or tacit, for their use. Retailers are apt to reply that their only responsibility is the lawful sale of tobacco products and that they and their employees ought not to be cast in the role of agents for achieving public health objectives, worthy though those objectives may be.

What has not yet been examined, however, is whether the inclusion of the health consequences of tobacco use generally, and tobacco use by adolescents in particular, in responsible-retailing programs increases the degree to which employees faithfully perform the protocols for selling tobacco to customers appearing to be age 26 or under (or their responsibilities for supervising other employees with sales duties). Investigations that compare retailer violation rates in stores that include a health component in their training with rates in similar stores that do not will help determine whether health content has a positive impact on retailer violation rates. Additionally, many stores that sell tobacco also sell beverage alcohol, and alcohol-retailer training often includes information about the health and safety consequences of adolescent alcohol use. Does omitting the health consequences for adolescent tobacco use send a message to clerks that tobacco sales laws are less important, or their violation less serious, than violations of alcohol sales laws?

The degree to which retailer violation rates are affected by clerk and manager attitudes toward tobacco sales to minors, and tobacco use by minors, is an important, related area for research.

^ What is the impact of broad community involvement on responsible retailing?

Closely related to the earlier question of health content as a predictor of effective responsible retailing is whether the involvement of community organizations and advocates increases the degree of merchant participation in responsible-retailing programs and the effectiveness of these programs. In one sense, this question is a measure of effectiveness for the community-based model discussed in this report. Examinations of this question would determine the criticality for State and local enforcement agencies to engage community partners in addressing retailer compliance with sales-to-minors laws.

^ What are the optimal methods for training employees?

This report examines specific content for responsible-retailing training and, in some cases, specific pedagogical techniques, such as role playing, for requesting IDs from customers and declining sales. Currently, there is little understanding about how and how often to perform training for optimal retention and application. How many hours of training in responsible-retailing protocols should be provided to newly hired employees? How frequently should employees be retrained? Do the time requirements for optimal training change as responsible tobacco retailing becomes normative retailer behavior and as State tobacco prevention initiatives influence normative attitudes about adolescent tobacco use?

^ What is the impact of store signage?

This report identifies signage as a best practice, informing customers of store policies on requesting IDs from customers appearing to be age 26 or younger who wish to purchase tobacco products. Do such signage and other printed materials deter minors from attempting purchases and store personnel from making sales to minors?

- ^ Should the laws and enforcement schemes related to youth access to tobacco and alcohol be made more congruent?

Best practices for responsible retailing of tobacco products and alcoholic beverages would appear to be very similar. What are the potential implications for retailers, enforcement agencies, public health agencies, and advocates if the tobacco and alcohol laws and the enforcement approaches were consistent? Under what circumstances might the consolidation of enforcement activities for tobacco and alcohol within a single agency prove beneficial or unadvisable? What are the policy implications for the various public and private stakeholders?

- ^ What are the appropriate role and effective use of retailer incentives?

One of the legislative recommendations in the attorneys general report *No Sale: Youth, Tobacco and Responsible Retailing* (Working Group of State Attorneys General 1994) is that the law should include positive incentives for responsible retailing. Do incentives, such as compliance credits for participating in responsible-retailing programs (Maine), nonrevocation of tobacco sales permits if stores participate in approved responsible-retailing training (Rhode Island), and affirmative defenses for the use of electronic age verification devices (Connecticut, New York), improve retailer violation rates? Similarly, what employer incentives to employees promote compliance?

- ^ What are the costs associated with implementing responsible-retailing programs?

What are the associated costs for a retailer to implement best practices, and how do these costs vary on the basis of retailer features and context factors? What are the prospective savings for a retailer from reduced exposure to fines, suspensions, and consumer protection actions? Alternatively, what are the relative costs for a retailer of dropping tobacco sales compared with adopting best practices?

What are the costs and the cost-effectiveness of a State-administered responsible-retailing program (such as Maine's "No Buts" program)? How can these costs be shared by the private retail sector: as a component of sales permit fees (i.e., borne by all permit holders), as participant fees for the training program, as penalties for noncompliance, or as voluntary direct contributions from retailer associations? Examinations of these questions can help increase both the cost-effectiveness and the sustainability of responsible-retailer programs.

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