

The We Card Program, Inc.



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September 14, 2010

RE: Docket No. FDA-2010-D-0350

Draft Guidance Tobacco Retailer Training Programs

The *We Card* program commends the FDA for issuing a comprehensive set of recommendations for an effective training program as outlined in its Draft Guidance for Tobacco Retailer Training Programs.

Since its launch in 1995, the *We Card* program has worked with retailers to prevent the sale of tobacco products to minors at the retail sales counter through education and training. Over time, with significant retailer input, research and implementation experience, the *We Card* program has been refined to address the realities of retail employee performance and meet the need for point-of-sale and in-store age calculation tools and awareness promoting signage.

Nearly all of the FDA's recommendations – especially the curricular elements within the instructional component of the training program – are addressed in the *We Card* employee training program, currently offered via online access or via custom deployment within retailers' computer-based training systems.

There are some specific elements within the FDA's draft guidance that we believe need clarification or adjustment to meet the business realities of the retail employee training workspace.

We Card supports and shares the FDA's over-arching premise that "an effective retailer training program should ensure that employees: 1) understand the tobacco access, advertising and promotion restrictions of the Tobacco Control Act and implementing regulations; (2) verify that customers are of legal age to purchase cigarettes and smokeless tobacco; and (3) successfully refuse purchase attempts by underage buyers."

Below are our specific comments associated with the draft guidance's major training components:

Applicable Laws and Penalties

The draft guidance recommends that training content include coverage of State and local laws. *We Card's* training program provides resources and summaries of applicable State laws. With some 3,000 counties in the U.S. according to the National Association of Counties, over 19,000 cities according to the National League of Cities, and a still higher volume of small towns and localities, we suggest the FDA's local law guidance remain a "recommendation" instead of a federal requirement.

Written Company Policies Against Sales to Minors

We Card has always recommended retailers adopt a written policy to communicate company policies and supports this requirement.

Comprehensive Description of Tobacco Products Covered by Laws Prohibiting the Sale of Tobacco Products to Youth

We Card supports this section but suggests the FDA's local law guidance remain a "recommendation" instead of a federal requirement.

Age Verification Requirements

We Card supports this entire section of the draft guidance with only one recommended change related to the *Photographic Identification Requirements* section. The draft guidance says, "FDA recommends that retailers include pictures of acceptable forms of identification in their training materials." *We Card* suggests this recommendation be changed due to some state laws, and military and Homeland Security regulations that restrict the use of images of forms

of identification (apparently to reduce the proliferation of fake IDs). *We Card* suggests substituting the word "pictures" with "facsimiles."

Methods for Ensuring and Documenting that Employees Have the Knowledge Required to Comply with Laws and Restricting the Access to, and Advertising and Promotion of, Tobacco Products

We Card strongly believes in the importance of evaluating the training performance of retail employees through a testing process. Additionally, the FDA's *Training Frequency* recommendations for current and new retail employees (along with yearly or as needed refresher training) and *Training Methods* recommendations are also consistent with our experience.

The FDA draft guidance recommends training documentation specifics that may be burdensome for retailers, especially the length of time for record keeping (4 years in order to cover the 48-month civil money penalty schedule). While *We Card's* training will offer 4-year training record retention to retailers, we believe it is important for the FDA to recognize the business burden it may place upon retailers.

Further, *We Card* suggests that "or electronic records" be added as an option for record keeping in the draft guidance's statement of "Retailers should retain the written records . . ."

Hiring Practices

We Card supports the concept of including an employee-signed acknowledgement of the importance of complying with laws prohibiting the sale of cigarettes and smokeless tobacco to youth.

The extension of this concept to non-employees or as the draft guidance indicates, "applicants for positions that involve selling tobacco" would likely be an added burden to retailers – especially given the high volume of applicants in the retail industry needed to address employee turnover. In some retail sectors 100-300% annual turnover is not uncommon. Even so, if this is a final requirement of the FDA, *We Card* will assist retailers in their efforts to comply with this hiring practice.

Finally, *We Card* recommends the FDA provide more clarity on what evidence a retailer would need to demonstrate that its employees have been trained using the eventual "approved retailer training program" or the "effective retailer training programs" covered in this draft guidance.

Overall, *We Card* compliments the FDA for its thoroughness in the draft guidance and looks forward to the FDA's regulations establishing an "approved retailer training program" in the future.

Sincerely,

A handwritten signature in black ink that reads "Doug Anderson". The signature is written in a cursive, flowing style.

Doug Anderson
President