

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
COUNTY OF INGHAM

In The Matter Of

File No. 06-47-CZ

WAL-MART STORES, INC.,

Hon. Beverly Nettles-Nickerson

Respondents. AG No. 200602788

ASSURANCE OF DISCONTINUANCE

The Complainant is Michael A. Cox, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan. The Respondent is Wal-Mart Stores, Inc., ("Wal-Mart").

This Assurance of Discontinuance ("Assurance") concerns the resolution of alleged violations of the Pricing and Advertising of Consumer Items Act (the "PACIA"), MCL 445.351, et seq. and the Michigan Consumer Protection Act (the "CPA"), MCL 445.901 et seq. Wal-Mart agrees not to contest (a) the authority of the Department of Attorney General to execute this Assurance; or, (b) any terms or conditions set forth herein.

The entry of this Assurance by Wal-Mart is not an admission of liability with respect to any issue dealt with in this Assurance nor is it an admission of any factual allegations or legal conclusions stated or implied herein.

The Parties agree that the terms and conditions of the Assurance are fair, reasonable and consistent with the public interest and the doctrines of applicable law.

I. JURISDICTION

The Ingham County Circuit Court has jurisdiction over the subject matter of this action pursuant to MCL 445.359(1) and MCL 445.905(1). The Court also has personal jurisdiction over the Respondent for the enforcement of this Assurance. Respondent waives all objections and defenses that it may have as to the jurisdiction of the Court or to venue in this Court.

II. PARTIES BOUND

2.1 This Assurance shall apply to and be binding upon Wal-Mart and its successors. Wal-Mart is responsible for compliance with the terms of this Assurance, and shall ensure that all of its Wal-Mart Retail Outlets are in compliance with the terms and conditions of this Assurance.

2.2 The signatories to this Assurance certify that they are authorized to execute and legally bind the parties they represent.

III. DEFINITIONS

3.1 "Assurance" means this Assurance and any appendices.

3.2 "Class of Item" shall have the meaning provided in MCL 445.351(c).

3.3 "Complainant" means Michael A. Cox, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan.

3.4 "Covered Item" means items displayed or offered for sale at retail that must have the price of the item stamped upon or affixed to the item, as required by MCL 445.353 and applicable Administrative Rules promulgated pursuant to the PACIA.

3.5 "Effective Date of this Assurance" means the date that this Assurance is filed with the Ingham County Circuit Court.

3.6 "Parties" means the Complainant and Respondent.

3.7 "Respondent" means Wal-Mart.

3.8 "Wal-Mart Retail Outlets" means any and all Wal-Mart branded retail stores presently open to the public in Michigan and any additional Wal-Mart branded retail stores opened by Wal-Mart in Michigan in the future.

3.9 "Independent Audit" means an audit of a Wal-Mart Retail Outlet to determine the level of compliance with the item pricing requirements of the PACIA using the methodology prescribed by the Protocol (as herein defined) and conducted by an independent third party selected by mutual agreement of the Parties.

3.10 "Protocol" means a methodology for assessing a Wal-Mart Retail Outlet's rate of compliance with the item pricing requirements of the PACIA by evaluating a random sample of Covered Items. The Protocol will be determined in accordance with paragraph 5.7, below.

3.11 All other terms shall have the meaning specifically defined in the PACIA and the CPA.

IV. STATEMENT OF PURPOSE

In entering into the Assurance, the mutual objective of Complainant and Wal-Mart is to resolve, without litigation, the alleged violations of the PACIA and CPA, the demand for payment of civil penalties, and the reimbursement of costs and expenses incurred by the Departments of Attorney General and Agriculture in investigating this matter and enforcing the PACIA and CPA.

V. IMPLEMENTATION OF COMPLIANCE MEASURES

5.1 Wal-Mart shall have all Wal-Mart Retail Outlets in compliance with the PACIA and the CPA on or before March 31, 2006.

5.2 Wal-Mart shall develop and implement compliance procedures (the "Compliance Plan") reasonably designed to ensure compliance with the item pricing requirements of the PACIA and obligations contained in this Assurance which, at a minimum, shall include the following:

A. At all times Wal-Mart shall maintain adequate resources including, but not limited to, appropriate staffing levels, equipment, and signage to fully comply with the PACIA and the CPA.

B. Wal-Mart shall institute and maintain compliance procedures to train managers and employees regarding the requirements of the PACIA as necessary to assure compliance therewith, and in particular with the item pricing requirements of Section 3 of the PACIA, MCL 445.353, and as necessary to assure compliance with this Assurance.

C. Wal-Mart shall require that associates not stock inventory on store shelves without first individually pricing Covered Items, or otherwise assuring that Covered Items are individually priced before stocking.

D. Wal-Mart shall conduct an operational audit of each Wal-Mart Retail Outlet at least quarterly during each calendar year commencing September 1, 2006, that shall include review of that store's adherence to the Compliance Plan. Such audit will be unannounced and conducted pursuant to the Protocol and utilize the Compliance Categories designated therein for item pricing compliance findings. If the audit discloses item pricing compliance rates within Compliance Categories B - G of the Protocol, a written or electronic report that includes recommendations to the store manager for an action plan to bring the store into

compliance will be furnished to the store manager and his or her supervisor. If the compliance rate is within Compliance Category A, the report will be furnished to the store manager. All written reports shall be provided, upon completion, to Complainant for a period of at least one year, and such longer duration upon Complainant's request.

5.3 The Compliance Plan shall be submitted to the Complainant for review and comment not later than August 1, 2006. If, after thirty (30) days, the Complainant has not objected to the Compliance Plan, the Respondent shall immediately implement it. While the Compliance Plan is being completed and reviewed by the Complainant, Wal-Mart shall maintain compliance with the PACIA and the CPA in all Wal-Mart Retail Outlets by appropriate interim compliance procedures. Thereafter, Wal-Mart shall continue to maintain compliance with the PACIA and will also follow all procedures set forth in the Compliance Plan, together with any amendments and revisions thereto following the submission thereof to the Complainant.

5.4 Pursuant to MCL 445.353(3), Wal-Mart may designate up to 25 classes of items or individual items that will not be individually price marked, provided the classes of items or individual items are listed and posted in compliance with the requirements of the PACIA and applicable Administrative Regulations, including R 285.555.1. In addition, Wal-Mart must comply with the signage requirements of MCL 445.353(4).

A. Exemption lists shall be placed in a location in which the greatest customer traffic normally occurs, which shall be consistent for each store location in Michigan. Wal-Mart shall identify and provide Complainant notice of the designated location.

B. Exempted items shall be listed and posted on a clear, readable and conspicuous sign.

5.5 Wal-Mart must fully honor its written refund policies. Any restriction or limitation imposed on the customer's right to receive full refund upon product returns shall be clearly and conspicuously included in its refund policies.

5.6 Until and after the Protocol is established, Complainant is authorized to monitor compliance with this Assurance by all lawful means, including but not limited to State inspections. Once the Protocol is established, Independent Audits of any Wal-Mart Retail Outlet or audits by State inspectors may also occur to determine compliance with MCL 445.353, without prior notice to Respondent and in the case of Independent Audits, at Respondent's expense. Respondent shall not be obligated to pay for more than 30 Independent Audits of Wal-Mart Retail Outlets per 12-month period during the term of this Assurance. This 30 limit does not apply to Independent Audits after the opportunity to cure period provided in subparagraph 6.5 B.

5.7 Selection of one or more independent entities authorized to perform the Independent Audits, approval of the Protocol, and approval of the costs and expenses for the Independent Audits, shall be made by mutual agreement of the Parties by August 1, 2006. If the Parties cannot agree, the Protocol attached as Appendix 1 (the "Base Protocol") shall be utilized and selection of independent auditors and approval of the costs and expenses of independent audits shall be made by Complainant. Any agreed-upon Protocol other than the Base Protocol that is to be used for imposition of Stipulated Penalties shall be filed with the Court as a Supplemental Appendix to this Assurance.

VI. PAYMENT OF CIVIL PENALTY

6.1 Wal-Mart shall pay to the State of Michigan the sum of \$ 1,400,000.00 as a civil penalty. Payment of \$780,000.00 shall be made within 15 days of the Effective date of this Assurance. Payment of the remaining \$620,000.00 shall also be made within 15 days of the entry of this Assurance to a segregated Wal-Mart account, pursuant to paragraphs 6.2 and 6.3 and may be increased as required for payment of stipulated penalties imposed for violations that occur before May 1, 2008 if the \$620,000.00 fund in the segregated account is exhausted.

6.2 The second payment of \$620,000.00 shall be held by Respondent in a segregated account designated for payment of Independent Audits and Stipulated Penalties pursuant to the this Assurance. Any balance of the second payment shall be waived on May 1, 2008. Stipulated penalties set forth in Subsection 6.3 for Respondent's noncompliance shall first be drawn from the segregated account and shall be the Complainant's exclusive remedy for alleged PACIA violations prior to April 30, 2008.

6.3 Respondent shall be liable for stipulated penalties in the amounts set forth below, which shall accrue per store violation for failure to comply with the item pricing requirements of Section 3 of the PACIA, MCL 445.353, during the period August 1, 2006 through April 30, 2008:

A. If any item pricing compliance levels found by any of Wal-Mart Retail Outlet's own operational audit of Covered Items is within Compliance Categories B - G of the Protocol, Respondent shall have seven (7) days to bring the subject location into compliance. Each occasion where two consecutive quarterly operational audits for a single store evidence a compliance rate within Compliance Category B - G triggers a \$10,000.00 penalty.

B. If item pricing compliance of any Wal-Mart Retail Outlet is below Compliance Category B (i.e., Compliance Categories C-G), the following stipulated penalties apply:

- 1) \$20,000.00 for each occasion when a Wal-Mart Retail Outlet is found to have compliance rates within Compliance Category C;
- 2) \$30,000.00 for each occasion when a Wal-Mart Retail Outlet is found to have compliance rates within Compliance Category D;
- 3) \$40,000.00 for each occasion when a Wal-Mart Retail Outlet is found to have compliance rates within Compliance Category E;
- 4) \$60,000.00 for each occasion when a Wal-Mart Retail Outlet is found to have compliance rates within Compliance Category F; and
- 5) \$100,000.00 for each occasion where a Wal-Mart Retail Outlet is found to have compliance rates within Compliance Category G.

6.4 Stipulated penalties set forth in paragraph 6.3 accrue upon violation that is established by any of the following:

- A. Any inspection by the State performed in accordance with the Protocol;
- B. Any Independent Audit performed pursuant to paragraph 5.6 above in accordance with the Protocol; or
- C. Operational self-audit pursuant to subparagraph 6.3A above.

Provided, however, that no Wal-Mart Retail Outlet shall be assessed stipulated penalties more than one time in a 30-day period. Also provided, however, that upon a finding of compliance lower than Category A, Respondent shall take immediate steps to come into full compliance.

6.5 Subject to subparagraphs 6.5 A and 6.5 B below, Respondent shall pay

Stipulated Penalties owed to the State no later than ten days after Respondent's receipt of written demand from Complainant. Payment for costs of Independent Audits shall be paid by Respondent to the auditor, with a copy to Complainant, no later than ten days after Respondent's receipt of written demand from Complainant. Failure to pay stipulated penalties or costs of an Independent Audit within ten days of written demand constitutes a violation of the terms and conditions of this Assurance.

A. Respondent shall have fifteen days after an inspection by the State that establishes imposition of Stipulated Penalties pursuant to subparagraph 6.4A, above to dispute the inspection findings and ten days thereafter to resolve any challenges to the inspection findings by informal negotiations between the Parties. Informal negotiations shall conclude when Complainant provides a written statement setting forth his resolution of the challenge to Respondent.

B. Respondent shall have seven days notice and opportunity to cure violations prior to imposition and accrual of Stipulated Penalties for compliance rates within Compliance Category C. The cure shall only be effective if the compliance rates fall within Compliance Category A based upon a subsequent Independent Audit of the subject Wal-Mart Retail Outlet, at Respondent's expense, which shall not be included in the limit on Independent Audits (30 per 12-month period) set in paragraph 5.6.

6.6 Payments shall be made by check payable to the "State of Michigan" and remitted to the Division Chief, Katharyn Barron, Consumer Protection Division, PO Box 30213, Lansing, MI 48909. The check shall reference *Wal-Mart, Assurance of Discontinuance, No. 200602788*.

6.7 Nothing herein shall be construed to exonerate any failure by Wal-Mart to fully

comply with PACIA or any provision of this Assurance after the Effective Date, to compromise the authority of the Attorney General to initiate a proceeding for failure to comply with this Assurance, or to initiate a proceeding for violations of the PACIA or CPA that occur after March 31, 2008.

6.8 Notwithstanding any other provision of this Section, Complainant may waive, in his unreviewable discretion, any portion of stipulated penalties that have accrued pursuant to this Assurance.

VII. REIMBURSEMENT OF COSTS AND EXPENSES

7.1 Included in the civil penalty paid pursuant to paragraph 6.1 is the sum of \$30,000.00 to reimburse the State of Michigan for its legal, investigative, and administrative expenses relating to historical compliance efforts directed at Wal-Mart.

VIII. OTHER PAYMENTS

8.1 Wal-Mart agrees to donate \$100,000.00 to a Michigan food bank or food banks at the direction of and to be identified by the Complainant. All donations shall occur within thirty days after the Effective Date of this Assurance. None of the donations shall include or be utilized in any Wal-Mart marketing materials, and the Complainant must approve the communication that accompanies the donations.

IX. COVENANT NOT TO SUE BY COMPLAINANT AND RESERVATION OF RIGHTS

9.1 The Subject Matter of this Assurance are the issues covered in paragraphs 6 through 16 of the March 1, 2006, Notice of Intended Action (NIA), a copy of which is attached as Appendix 2 and incorporated by reference and any issues related to compliance with the item-pricing requirements of PACIA. In consideration of the implementation of compliance

measures, the payment of the civil penalty (including the potential for stipulated penalties in excess of \$620,000 00), and the reimbursement of the costs and expenses that will be made by Wal-Mart under the terms of this Assurance, and except as specifically provided in this Section, Complainant covenants not to sue or to take administrative action against Wal-Mart for claims arising from the Subject Matter of this Assurance through the period ending April 30, 2008.

9.2 The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in paragraph 9.1. Complainant reserves, and this Assurance is without prejudice to, all rights against Wal-Mart with respect to all other matters including, but not limited to, the following:

- A. Liability arising from a violation by Wal-Mart of a requirement of this Assurance;
- B. Liability for violations not related to the Subject Matter of this Assurance.;
- C. Liability for violations of the PACIA and the CPA that occur after April 30, 2008.

X. NOTICES

All notices, deliveries or other communications required or permitted hereunder shall be in writing and shall be deemed given when sent by facsimile transmission and by certified or registered mail (unless otherwise specified) addressed as follows:

- A. If to Complainant:
Consumer Protection Division
PO Box 30213
Lansing MI 48909
- B. If to Wal-Mart:

General Counsel
Wal-Mart Stores Division
Legal Department
702 S. W. 8th Street
Bentonville, AR 72716-0860

XI. GENERAL PROVISIONS

11.1 This Assurance shall be binding upon, inure to the benefit of, and apply to the parties and their successors-in-interest. This Assurance shall not be introduced in any other proceeding.

11.2 This Assurance does not constitute an approval by the State of Michigan of any of Wal-Mart's programs or practices, and Wal-Mart shall make no representation to the contrary.

11.3 This Assurance shall supersede any and all agreements and prior Assurances that Wal-Mart may have entered into prior to the entry of this Assurance with the Attorney General of the State of Michigan in connection with alleged violations of the PACIA or the CPA.

11.4 No change or modification of this Assurance shall be valid unless in writing and signed by both parties.

11.5 Each of the Parties participated in the drafting of this Assurance, and therefore the terms hereof are not intended to be construed against either of the parties by virtue of draftsmanship.

11.6 Any failure by any Party to insist on strict or full performance by any other Party of any provision of this Assurance shall not be deemed a future waiver of any of the provisions of this Assurance, and such Party, notwithstanding such failure, shall have the right to insist upon the full and specific performance of any and all of the provisions of this Assurance.

11.7 This Assurance may be executed in counterparts. The Assurance shall take effect on the date that the Assurance is filed with the Ingham County Circuit Court.

XII. APPLICABLE LAW

This Assurance shall be construed in accordance with and governed by the laws of the State of Michigan.

XIII. TERMINATION

This Assurance shall terminate on April 30, 2008, except that Section IX shall survive. Prior to April 30, 2008, the parties shall be allowed to enforce this Assurance for purposes of addressing any disputed matters arising under Sections V or IX and this Court shall have continuing jurisdiction for such purposes.

MICHAEL A. COX
ATTORNEY GENERAL

Dated: 4-21-06

By: Katharyn A. Barron
Katharyn Barron (P45363)
Division Chief Consumer Protection
Division
PO Box 30213
Lansing MI 48909
Tel. 517-335-0855

WAL-MART STORES, INC

Dated: April 21, 2006

By: David Carmon
David Carmon
Regional Vice President
Wal-Mart Stores, Inc.
702 S. W. 8th Street
Bentonville, AR 72716-0860



Tab 1

Wal-Mart Item Pricing Assurance of Discontinuance Stipulated Penalty Base Inspection Protocol

I. Introduction

The protocol outlined in this document determines whether stipulated penalties provided for in the April 21, 2006 Assurance of Discontinuance between Wal-Mart and the Michigan Attorney General (paragraph 6.3) apply. This document shall be referred to as the "Wal-Mart Item Pricing Assurance of Discontinuance Inspection Protocol."

The protocol uses a modified methodology as adopted by the National Conference on Weights and Measures and published by the National Institute for Standards and Technology (NIST).

State employees and/or an independent third party paid for by Wal-Mart will use this protocol to examine and report on the level of item pricing compliance in Michigan Wal-Mart stores.

II. Sampling Methodology

For purposes of this Wal-Mart Item Pricing Assurance of Discontinuance Protocol, a sample of at least 525 items will be examined for each store inspected. A total of 400 samples will be randomly examined from identified Merchandise Groups. An additional 125 items will be randomly selected from areas of the store not covered in the identified Merchandise Groups.

The precise examination procedures are explained in section VI

III. Definitions

Exemption List: List of 25 classes of merchandise and an additional 25 classes of sale-priced merchandise (totaling 50 classes) each individual store has chosen not to individually price mark per Michigan's Item Pricing Law (MCL 445 353).

Inspector. Either a State employee or an independent third party selected by the Attorney General, but paid for by Wal-Mart, who implements the Wal-Mart Item Pricing Assurance of Discontinuance Inspection Protocol.

Item Pricing Assurance of Discontinuance Inspection Report (Inspection Report).

The form of the report is attached at Appendix 1. The Inspection Report includes any dispute and reply documents generated as a result of implementing this protocol. Inspectors will record all relevant inspection data in this report and, upon completion, the cover sheet will identify the percentage of store compliance.

Item. One unit within a Sample

Merchandise Group. A group of products identified under a common heading for inspection purposes, and as so specifically defined:

1. **Electronics** – TVs, DVDs, CDs, cameras, phones, etc.
2. **Groceries** – dry foods, canned foods, cereals, bread, frozen and refrigerated items, etc. Note: At Supercenters, this group will also include paper products and cleaning supplies located in the Grocery area.
3. **Hardware and Paint** – tools, fasteners, tool accessories, paint, brushes, rollers, etc.
4. **Health and Beauty** – medicines, makeup, vitamins, hair products, etc.
5. **Home Fashions** – bathroom, kitchen, and living room fashions, towels, bedding, bathroom accessories, curtains, picture frames, clocks, candles, pillows, etc.
6. **Housewares** – utensils, small appliances, kitchen accessories, pots, pans, etc.
7. **Paper Products and Cleaning Supplies** – paper towels, plates, napkins, plastic ware, gift wrapping materials, bleach, detergent, mops, brooms, etc. Note: At Supercenters, this category will be eliminated as it will be included as part of the Grocery Merchandise Group. If the Supercenter has these items in the grocery area and in a separate area of the store, include items in the separate area of the store in the random sample.
8. **Pets** – canned food, feeding supplies, leashes, collars, pet accessories, etc.
9. **Seasonal and Garden** – lawn equipment, seasonal decorations, flower pots, potting soil, etc.
- 10 **Toys and Games** – stuffed animals, dolls, games, model kits, etc.

Sample. A group of random selections within a particular Merchandise Group.

Section. A specific shelving unit, bin, or other display from within a Merchandise Group.

Store Manager. The person identified by service desk personnel as the Store Manager during the time of the inspection.

Universal Product Code (UPC). A unique symbol that consists of a machine readable code and human-readable numbers. UPCs are printed on package labels or are applied with tags or labels.

IV. Test Notes

4.1 Safety and Health. Practice safe work habits to avoid personal injuries or property damage. Be aware of and follow all safety or sanitation rules at the inspection site. Handle perishable, dairy, or frozen products properly to avoid damage (e.g., avoid defrosting frozen foods or allowing dairy products to warm to room temperature that may result in spoilage). Frozen and refrigerated Items that are not priced should not be placed in the shopping cart. If no price tag is affixed to a selected frozen or refrigerated Item, record the shelf tag data, aisle location, and other information to identify the specific location of the Item.

4.2 Confidentiality of Findings. Inspection findings should be discussed only with an authorized store representative and released only in accordance with applicable public records laws.

V. Pre-Inspection Tasks; Materials and Equipment

Inspectors should become familiar with procedures outlined in this document before visiting a store for inspection. Conduct inspections in a manner that does not disrupt normal business activities. The following materials and equipment are recommended for use in conducting the inspections:

- Wal-Mart Item Pricing Assurance of Discontinuance Inspection Protocol
- Copy of Item Pricing Act and Regulations
- Blank Item Pricing Assurance of Discontinuance Inspection Report
- Clipboard
- Writing instrument
- Shopping cart to collect items not priced
- Highlighter(s)

VI. Inspection

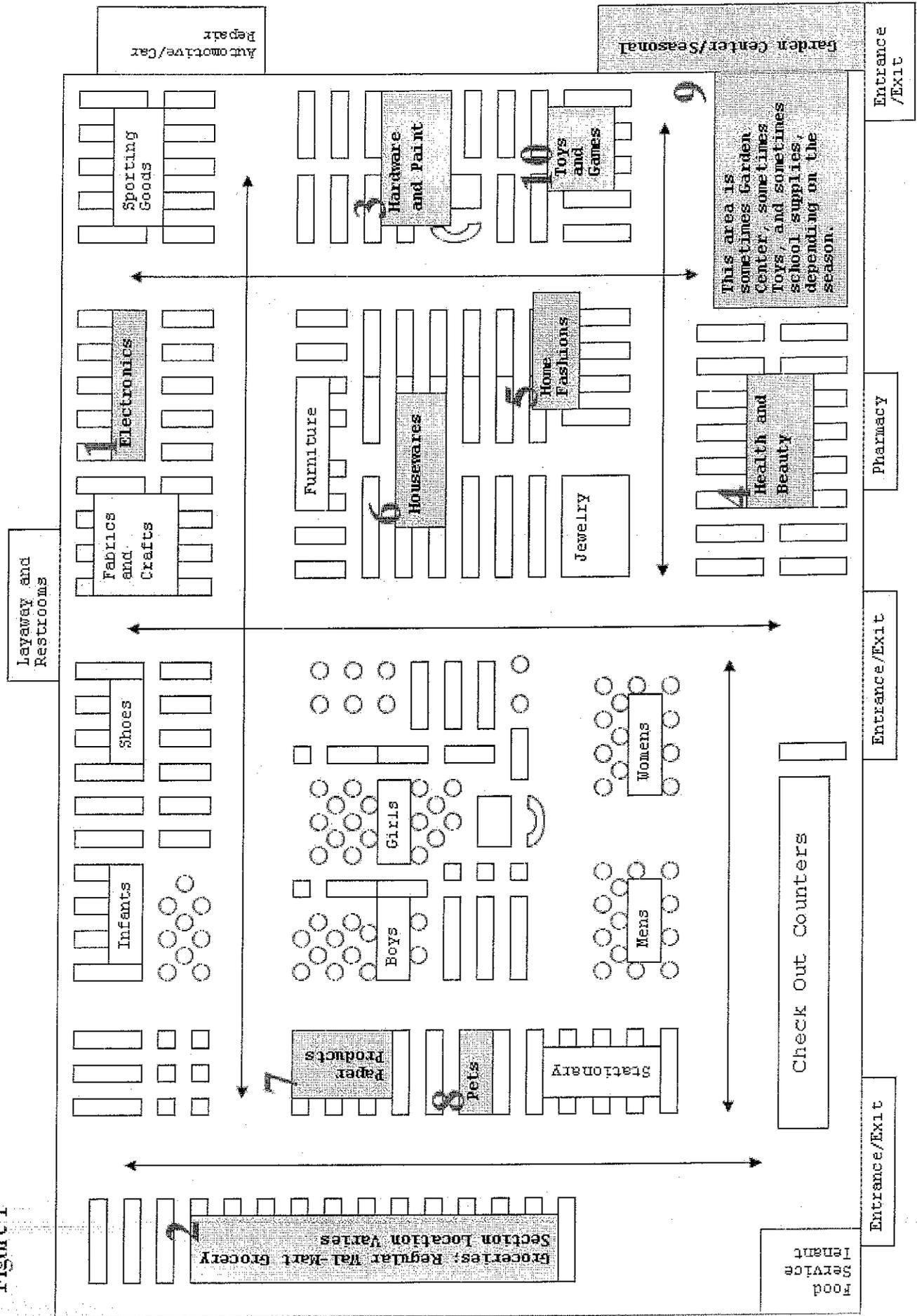
6.1 Overview

Inspection procedures will utilize both stratified and randomized Sample collection.

Stratified Sample collection is identifying specific Merchandise Groups from which to sample; this procedure identifies 10 Merchandise Groups. The relevant Merchandise Groups are identified in Figure 1.

Wal-Mart Supercenter Floor Plan

Figure 1



Main Aisles = \longleftrightarrow

Once in a Merchandise Group, a randomized Sample collection technique is used. In each identified Merchandise Group, a total of 40 Items will be selected. Using the randomized technique detailed in Step 4 of § 6.4, all Items in a Merchandise Group have an equal chance of being included in the Sample.

Once the identified Merchandise Groups have been examined, the Inspector will take a random Sample of the remainder of the store to record information for an additional 125 items.

6.2 Merchandise Group Inspection

In each of the following Merchandise Groups, 40 Items will be selected, subject to food/grocery exception* at Wal-Mart Supercenters.

1. Electronics
2. Groceries
3. Hardware and Paint
4. Health and Beauty
5. Home Fashions
6. Housewares
7. Paper Products and Cleaning Supplies
8. Pets
9. Seasonal and Garden
10. Toys and Games

As marketing practices evolve, these Merchandise Groups may change. Upon 15 calendar days notice, the Attorney General may substitute other or new Merchandise Groups for any Merchandise Group listed above.

Generally speaking, each of these Merchandise Groups can be found in every Wal-Mart store and Supercenter. Look for department signs (often labeled with big hanging signs) to determine if you are in the appropriate Merchandise Group.

The departments typically include anywhere between 10 and 20 large shelving units that are organized into sub-departments. For example, the Home Fashions department is broken down into sub-departments such as bathroom, kitchen, and living room fashions.

An Inspector will be careful to include items in the proper Merchandise Group; however, identifying an Item in the wrong Merchandise Group does not affect inspection results or related stipulated penalties.

** The regular Wal-Mart stores do not have a large Groceries Merchandise Group and all of the food Items are shelved, so you can use the procedure outlined above to select 40 items from the grocery Merchandise Group. In Supercenters, select 80 Items from the Groceries Merchandise Group, eliminate the Paper Products and Cleaning Supplies*

Merchandise Group, subsequently reducing the total number of Merchandise Groups to nine.

6.3 Remainder of the Store Inspection

An additional 125 Items will be examined from a random selection of the remainder of the store. Of the remaining 125 Items, a random selection of 25 will be excess and only utilized if one of the first 500 Items is eliminated because it is exempt.

Excess items will be identified by choosing a number between 5 and 25. Using the number chosen, start at the beginning of your list of 125 items and count down that number; highlight that Item as excess. The process continues until 25 Items are identified as excess. Items marked excess will be selected, if needed, in the order they were marked excess.

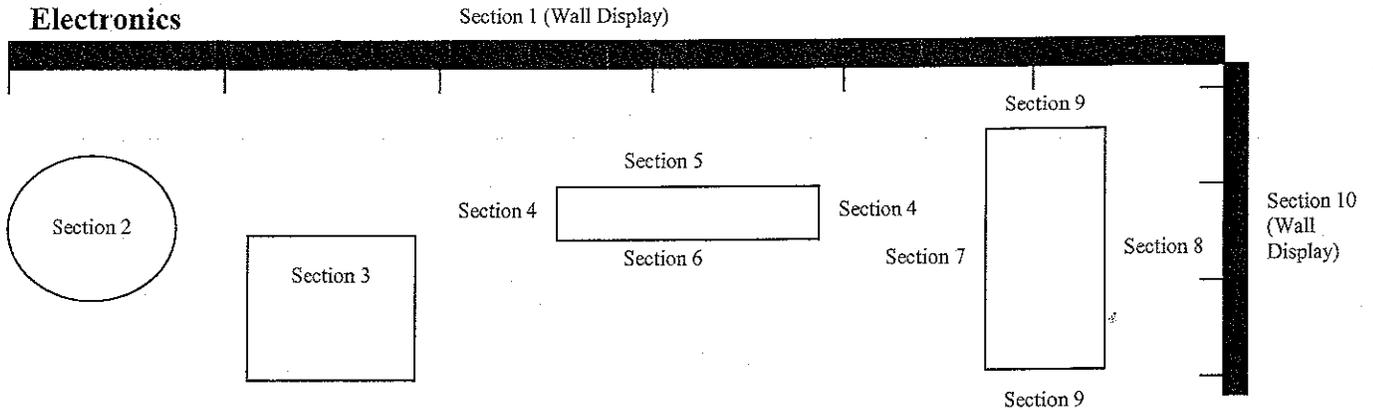
6.4 Inspection Procedures and Technique

Step 1: State Inspectors will identify themselves at the service desk and ask for the Store Manager before beginning inspection. A single Wal-Mart employee may observe the inspection process but may not interfere while the inspection is ongoing. In exchange for the agreement that State Inspectors will identify themselves at the beginning of the inspection, Wal-Mart agrees that it will not undertake any abnormal item pricing activity during the inspection.

Step 2: Familiarize self with store. It may help to start by taking a walk around the store to get a sense of how the store is organized and to identify where the targeted Merchandise Groups are located. An Inspector may begin by going to any Merchandise Group.

Step 3: Assess the size of the Merchandise Group. To be able to randomly select items in any Merchandise Group, you will first have to break the Merchandise Group down into Sections. Identify all of the shelving units in the Merchandise Group. Each long side of a shelving unit is considered one Section. Count the end-caps or short sides of each shelving unit as 1 Section together. If the shelving unit or display rack is square or round, count it as a single Section. Aisle displays containing items in the Merchandise Group should be included and counted as a single Section. See Figure 2 for an illustration of how to identify Sections among several shelving units within a Merchandise Group.

Figure 2: How to identify Sections in a Merchandise Group



Step 4: How to select items from each Section in a Merchandise Group. The goal is to ensure that 40 items are selected randomly from throughout a Merchandise Group (subject to section 6.2 regarding the grocery Merchandise Group in a Wal-Mart Supercenter). Divide the number of Items you need by the number of Sections in the Merchandise Group. Using the hypothetical example in Figure 1, there are 10 Sections from which you need to select 40 individual Items. Divide 40 by the number of Sections and determine how many Items you need per Section. Hypothetically, you need four samples per Section.

If you have more Sections than required Items, randomly skip Sections but ensure Items are selected from a representative and diverse Sample of the Merchandise Group.

You may start at any Section in the Merchandise Group. As you move from Section to Section, follow a snake-like pattern and move in an orderly manner.

If you need more than one Item from a Section:

- Start with any Item in the Section and count off 5 Items along the shelf if it is the narrow side of the shelving unit, or count off 15 Items if it is the long side of the shelving unit. You can start counting-off at any shelf and any point along the shelf. If the same product of the same size, brand and price is displayed side-by-side on the shelf, that is considered one Item as you are counting off. For example, bath towels of the same brand, size, description, and price, but of different color, would be considered the same product.
- As you're counting off, include Items that may be out of stock in your count. Select the 5th or 15th Item, depending on how many

Place selected Items not priced in the shopping cart. Frozen or refrigerated Items that are not priced should not be placed in the shopping cart. Selected Items that are too big or too heavy also should not be placed in the shopping cart. If no price tag is affixed to a selected frozen or refrigerated Item, or an Item too big or heavy to place in the shopping cart, record the shelf tag data, aisle location, and other information to identify the specific location of the Item. Carefully identify – by highlighting or otherwise – Items that are not priced but that you did not place in the shopping cart on the Inspection Report.

- Once you've collected 40 Items from a Merchandise Group, move on to the next Merchandise Group and repeat steps three through five.

It is extremely important that you clearly record all information.

Step 6: Selecting merchandise from the remainder of the store. After completing all of the Merchandise Groups identified in section 6.2, you are ready to select Items from the remainder of the store.

One-hundred and twenty-five (125) Items from the merchandise in the remainder of the store will be selected using a different procedure.

- **Identify all of the remaining shelving units.** Start in one corner of the store and walk through all of the main aisles of the store counting off the number of shelving units not included in the identified Merchandise Groups. A shelving unit is the entire display rack, regardless of size.
 - **If the number of shelving units is greater than 125,** divide 125 by the number of shelving units ($125/150 = .83$). This gives you the number of items you may select per shelving unit. Multiple .83 by 10 to determine how many items you may select per 10 shelving units ($.83 \times 10 = 8.3$). You may select 8.3 Items for every 10 shelving units. Therefore, if you select 8 or 9 Items for every 10 shelving units, you will get a representative Sample (because the number is closer to 8, select 8 per 10 shelving units more than you select 9). Continue this process until you reach 125 Items.
 - **If the number of shelving units is less than 125,** divide 125 by the number of shelving units ($125/90 = 1.39$). Multiple 1.39 by 10 to determine how many items you may select per 10 shelving units ($1.39 \times 10 = 13.9$). You may select almost 14 Items for every 10 shelving units.
- Now you're ready to begin sampling the remaining merchandise.

- Find a starting point in the store and select an Item from the shelving unit. If the shelving unit is a small unit (like an end-cap or stand alone display) count five Items over; if the shelving unit is a large shelving unit (like an aisle), count 15 Items over. Select the identified Item and record relevant data.
- Move to the next shelving unit and repeat until all 125 Items are selected
- If you run out of shelving units before you reach 125 Items, go back to where you started and select from areas in shelving units not previously sampled.

VII. Documentation of Findings

As items are selected, use the Inspection Report to record findings, including:

1. the number of Items checked;
2. name of the product;
3. U.P.C. for each Item;
4. whether Item has a price tag affixed;
5. if no price tag is affixed, the shelf tag information;
6. if no affixed price tag, the general location of the Item.
7. if no affixed price tag and the Item is frozen or refrigerated, or too large or heavy to place in shopping cart, identify by highlighting or otherwise on the Inspection Report.

Remember to place all Items selected for inspection that do not have affixed prices in your shopping cart.

VIII. Verify sampling is complete and identifying alternates.

Once you have selected a total of 400 Items from all of the identified Merchandise Groups, and 125 Items from a random sampling of the remainder of the store, make sure all of the Items that you catalogued are comprehensible and that the writing is legible

After you have verified that you have identified a total of at least 525 Items, count the number of Items in your shopping cart and make sure it is equal to the number you identify on your Inspection Report sheet as not marked; remember to look on the Inspection Report for frozen or refrigerated Items, or Items that are too large or too heavy for you to put in the shopping cart. Items that were not priced but are not in the shopping cart should be identified by highlighting or otherwise on the Inspection Report.

Looking at the list of 125 Items identified from random Merchandise Groups of the store (Merchandise Groups not identified in section VI), select a number between 5 and 25. Using the number you select, count down that many items on your verification sheet.

Note that Item as alternate 1. Continue this process until you have identified 25 alternates. Once an Item is identified as an alternate, do not count it again when you are identifying additional alternates.

IX. Evaluation of Inspection Results

Identifying Item Pricing Compliance Category

Count up the total number of Items not priced. Do not include any Items identified as alternates. Using the chart in Appendix 2, identify the appropriate Item Pricing Compliance Category. The chart in Appendix 2 assumes a sample of 500 Items. If selected Items are later eliminated by challenges, use the alternates in the order they were selected. No adjustments are made if through elimination of selected Items the sample drops below 500.

X. Post-Inspection Tasks

- 10.1 After you enter the compliance category on the first page of the Inspection Report, go to the service desk. Identify yourself and the purpose of your visit, asking to speak to the Store Manager.
- 10.2 Note the time you ask to speak with the Store Manager on the first page of the Inspection Report.
- 10.3 Ask the Store Manager for a copy of the store's Exemption List. Attach the list to the Inspection Report (a sample store Exemption List is attached as appendix 3).
- 10.4 The Store Manager shall have the opportunity to review the Inspection Report and the shopping cart of merchandise within a two-hour (maximum) window. Only at this time may the independent Inspector's findings be disputed.
- 10.5 The scope of the dispute of the independent Inspector's findings is limited to items and issues identified by the Store Manager. Findings not challenged are deemed accurate and applicable stipulated penalties apply.
- 10.6 Findings may only be challenged by providing a response and any additional evidence the Store Manager deems appropriate. Disputes must specifically identify challenged items and the basis for the dispute.
- 10.7 The Store Manager's dispute document must be completed within two hours of the time the inspection was completed. The inspection completion time will be measured from the time the Inspector identifies him or herself at the service desk and asks for the Store Manager.

- 10.8 The dispute may be in written or other form (photos, Xerox copies, etc. . .). The Store Manager's written dispute is limited to 250 words.
- 10.9 The Inspector must prepare a written reply to any dispute prepared by the Store Manager. The Inspector's reply is limited to 150 words.
- 10.10 If the Store Manager's dispute eliminates an Item from the 500 sample, the first alternate is considered. This process is repeated for each Item successfully disputed.
- 10.11 The Store Manager must sign the first page of the Inspection Report.
- 10.12 The Store Manager may make a copy of the Inspection Report, the Store Manager's response, and the reply prepared by the Inspector.
- 10.13 The Store Manager will ensure that all Items identified as not priced are marked within 24 hours of the completion of the Inspection.
- 10.14 Notwithstanding the foregoing, for Inspections performed by the State, Wal-Mart will have an additional challenge process identified in the Assurance of Discontinuance.

X. Inspection Report and Challenge Documents to Attorney General

The original completed Inspection Report and all challenge documentation shall be provided to the Michigan Attorney General within one business day of completing the Inspection.

XI. Appendices

1. Inspection Report
2. Compliance Categories
3. Sample store Exemption List

Item Pricing Assurance of Discontinuance Inspection Report

Inspector name(s) _____
and affiliation: (print)

(print)

Date: _____

Item Pricing
Compliance

Time enter store: _____

Category: _____

Time inspection complete: _____

Time asked for Store Manager
at Service Desk: _____

Store Manager's signature

Time Store Manager signs
Report / Submits objections: _____

Print Store Manager's name

Number of items checked
in Merchandise Group
Inspection (*should be 400*): _____

Number of items checked
in remainder of the store
Inspection (*should be 125*): _____

Time exit store: _____

Inspector generally must place Items selected for inspection that do not have a price affixed in the shopping cart. Frozen or refrigerated Items that are not priced should not be placed in the shopping cart. Selected Items that are too big or too heavy also should not be placed in the shopping cart. The shopping cart must be presented to Store Manager with this completed Inspection Report.

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: ELECTRONICS

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
1.)					
2.)					
3.)					
4.)					
5.)					
6.)					
7.)					
8.)					
9.)					
10.)					
11.)					
12.)					
13.)					
14.)					
15.)					
16.)					
17.)					
18.)					
19.)					
20.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: ELECTRONICS

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
21.)					
22.)					
23.)					
24.)					
25.)					
26.)					
27.)					
28.)					
29.)					
30.)					
31.)					
32.)					
33.)					
34.)					
35.)					
36.)					
37.)					
38.)					
39.)					
40.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: GROCERIES

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
1.)					
2.)					
3.)					
4.)					
5.)					
6.)					
7.)					
8.)					
9.)					
10.)					
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14.)					
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16.)					
17.)					
18.)					
19.)					
20.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: GROCERIES

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
21.)					
22.)					
23.)					
24.)					
25.)					
26.)					
27.)					
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30.)					
31.)					
32.)					
33.)					
34.)					
35.)					
36.)					
37.)					
38.)					
39.)					
40.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: HARDWARE AND PAINT

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
1.)					
2.)					
3.)					
4.)					
5.)					
6.)					
7.)					
8.)					
9.)					
10.)					
11.)					
12.)					
13.)					
14.)					
15.)					
16.)					
17.)					
18.)					
19.)					
20.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: HARDWARE AND PAINT

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
21.)					
22.)					
23.)					
24.)					
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37.)					
38.)					
39.)					
40.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: HEALTH AND BEAUTY

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
1.)					
2.)					
3.)					
4.)					
5.)					
6.)					
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8.)					
9.)					
10.)					
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12.)					
13.)					
14.)					
15.)					
16.)					
17.)					
18.)					
19.)					
20.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: HEALTH AND BEAUTY

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
21.)					
22.)					
23.)					
24.)					
25.)					
26.)					
27.)					
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29.)					
30.)					
31.)					
32.)					
33.)					
34.)					
35.)					
36.)					
37.)					
38.)					
39.)					
40.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: HOME FASHIONS

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
1.)					
2.)					
3.)					
4.)					
5.)					
6.)					
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17.)					
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19.)					
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Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: HOME FASHIONS

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
21.)					
22.)					
23.)					
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30.)					
31.)					
32.)					
33.)					
34.)					
35.)					
36.)					
37.)					
38.)					
39.)					
40.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: HOUSEWARES

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
1.)					
2.)					
3.)					
4.)					
5.)					
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19.)					
20.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: HOUSEWARES

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
21.)					
22.)					
23.)					
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34.)					
35.)					
36.)					
37.)					
38.)					
39.)					
40.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: PAPER PRODUCTS AND CLEANING SUPPLIES

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
1.)					
2.)					
3.)					
4.)					
5.)					
6.)					
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14.)					
15.)					
16.)					
17.)					
18.)					
19.)					
20.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: PAPER PRODUCTS AND CLEANING SUPPLIES

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
21.)					
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23.)					
24.)					
25.)					
26.)					
27.)					
28.)					
29.)					
30.)					
31.)					
32.)					
33.)					
34.)					
35.)					
36.)					
37.)					
38.)					
39.)					
40.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: PETS

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
1.)					
2.)					
3.)					
4.)					
5.)					
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9.)					
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12.)					
13.)					
14.)					
15.)					
16.)					
17.)					
18.)					
19.)					
20.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: PETS

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
21.)					
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26.)					
27.)					
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29.)					
30.)					
31.)					
32.)					
33.)					
34.)					
35.)					
36.)					
37.)					
38.)					
39.)					
40.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: SEASONAL AND GARDEN

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
1.)					
2.)					
3.)					
4.)					
5.)					
6.)					
7.)					
8.)					
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10.)					
11.)					
12.)					
13.)					
14.)					
15.)					
16.)					
17.)					
18.)					
19.)					
20.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: SEASONAL AND GARDEN

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
21.)					
22.)					
23.)					
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28.)					
29.)					
30.)					
31.)					
32.)					
33.)					
34.)					
35.)					
36.)					
37.)					
38.)					
39.)					
40.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: TOYS AND GAMES

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
1.)					
2.)					
3.)					
4.)					
5.)					
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10.)					
11.)					
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13.)					
14.)					
15.)					
16.)					
17.)					
18.)					
19.)					
20.)					

Inspector name(s) and Affiliation: _____ Date: _____

Merchandise Group: TOYS AND GAMES

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
21.)					
22.)					
23.)					
24.)					
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31.)					
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35.)					
36.)					
37.)					
38.)					
39.)					
40.)					

Inspector name(s) and Affiliation: _____ Date: _____

GENERAL MERCHANDISE ~ REMAINDER OF STORE

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
1.)					
2.)					
3.)					
4.)					
5.)					
6.)					
7.)					
8.)					
9.)					
10.)					
11.)					
12.)					
13.)					
14.)					
15.)					
16.)					
17.)					
18.)					
19.)					
20.)					

Inspector name(s) and Affiliation: _____ Date: _____

GENERAL MERCHANDISE ~ REMAINDER OF STORE

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
21.)					
22.)					
23.)					
24.)					
25.)					
26.)					
27.)					
28.)					
29.)					
30.)					
31.)					
32.)					
33.)					
34.)					
35.)					
36.)					
37.)					
38.)					
39.)					
40.)					

Inspector name(s) and Affiliation: _____ Date: _____

GENERAL MERCHANDISE ~ REMAINDER OF STORE

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
41.)					
42.)					
43.)					
44.)					
45.)					
46.)					
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49.)					
50.)					
51.)					
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53.)					
54.)					
55.)					
56.)					
57.)					
58.)					
59.)					
60.)					

Inspector name(s) and Affiliation: _____ Date: _____

GENERAL MERCHANDISE ~ REMAINDER OF STORE

Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
61.)				
62.)				
63.)				
64.)				
65.)				
66.)				
67.)				
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69.)				
70.)				
71.)				
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73.)				
74.)				
75.)				
76.)				
77.)				
78.)				
79.)				
80.)				

Inspector name(s) and Affiliation: _____ Date: _____

GENERAL MERCHANDISE ~ REMAINDER OF STORE

	Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
81.)					
82.)					
83.)					
84.)					
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86.)					
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91.)					
92.)					
93.)					
94.)					
95.)					
96.)					
97.)					
98.)					
99.)					
100.)					

Inspector name(s) and Affiliation: _____ Date: _____

GENERAL MERCHANDISE ~ REMAINDER OF STORE

Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
101.)				
102.)				
103.)				
104.)				
105.)				
106.)				
107.)				
108.)				
109.)				
110.)				
111.)				
112.)				
113.)				
114.)				
115.)				
116.)				
117.)				
118.)				
119.)				
120.)				

Inspector name(s) and Affiliation: _____ Date: _____

GENERAL MERCHANDISE ~ REMAINDER OF STORE

Product	UPC	Price Tag Affixed Y/N	If No Price Tag Affixed, Self Tag Info	If No Price Tag Affixed, General Location of Item
121.)				
122.)				
123.)				
124.)				
125.)				

Compliance Categories

<u>Category</u>	<u># of Items</u>
A	≤ 27 Items
B	28 – 52 Items
C	53 – 77 Items
D	78 – 102 Items
E	103 – 127 Items
F	128 – 152 Items
G	≥ 153 Items

WAL★MART

A 87443
10-26-05
Comp # 128916

25 NON-PRICING ITEMS

1. ONE GALLON DRINK & DISTILLED WATER
2. PRINGLES 7oz. (not including fat free)
3. SAM'S CHOICE FREE & CLEAR
4. SAM'S CHOICE 2 LITER COLA
5. SAM'S CHOICE 12 PACK COLA
6. FOLGERS COFFEE 30 oz
7. BOUNTY SINGLE BIG ROLL PAPER TOWEL
8. ANGEL SOFT 24-PACK TOILET TISSUE
9. INDIVIDUAL HOT WHEELS
10. FRISKIES CAN CAT FOOD
11. PEDIGREE 13.2 oz CAN DOG FOOD
12. WAL-MART 12 oz SPRAY PAINT
13. SOFT WHITE 4-PACK LIGHT BULBS
14. 40 LB YELLOW BAG MORTON SALT
15. ONE GALLON CLOROX REGULAR BLEACH
16. 100-oz TIDE AND TIDE WITH BLEACH LIQUID DETERGENT
17. 25 POUND WILD BIRD SEED
18. TECH 2000 ONE GALLON ANITFREEZE
19. ONE GALLON WINDSHEILD SOLVENT
20. ABERFOYLE 12-PACK WATER 16.9 oz
21. OL' ROY 50 POUND RED BAG DOG FOOD
22. WHITE CLOUD 9 ROLL TOILET TISSUE
23. SUN DETERGENT 200 oz LIQUID DETERGENT
24. STANDARD 4-PACK LIGHT BULBS
25. DEEP POCKET PILLOW

Tab 2

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

In the Matter of:

AG File No. 200602788

WAL-MART STORES, INC.

Respondent.

NOTICE OF INTENDED ACTION

TO: WAL-MART STORES, INC.

Attn: The Corporation Company, Resident Agent
30600 Telegraph Road
Bingham Farms, MI 48025

Kelley Cawthorne
101 South Washington Square, Fl 9
Lansing, MI 48933

MICHAEL A. COX, Attorney General of the State of Michigan, pursuant to the provisions of the Michigan Consumer Protection Act, MCL 445.901 et seq., (MCPA) and the Pricing and Advertising of Consumer Items Act, MCL 445.351 et seq., ("Item Pricing Act"), gives ten days notice as required by section 5(2) of the MCPA, MCL 445.905(2) prior to commencement of legal action.

Pursuant to section 9(2) of the Item Pricing Act, MCL 445.359(2), Wal-Mart Stores, Inc. is being placed on notice that it must cease and desist or take positive action to cease and desist from continuing to act in violation of section 3(1) of the Item Pricing Act, MCL 445.353(1) or the State will file a lawsuit seeking to enjoin continuing and further violation of the Item Pricing Act, a substantial civil penalty, and reimbursement of all costs.

The Attorney General alleges that Wal-Mart Stores, Inc. has engaged, is engaging, or may continue to engage in the following methods, acts or practices that the Consumer Protection Act and the Item Pricing Act prohibit.

I. FACTUAL ALLEGATIONS

1. Wal-Mart Stores, Inc. ("Wal-Mart") is a Delaware corporation that is engaged in trade or commerce in the State of Michigan.

2. Wal-Mart is engaged in the business of selling items at retail to consumers at its general merchandise stores, with over eighty store locations in the State of Michigan.

3. The Department of Attorney General has received numerous citizen complaints concerning the failure of Wal-Mart to individually mark ("item price") the retail price of goods sold at its retail establishments.

4. Many of these citizen complaints were sent directly to Wal-Mart's corporate offices with a request that Wal-Mart respond to the allegations set forth in the complaints.

5. Wal-Mart has a history of violating the Item Pricing Act and failing to comply with the terms of settlement agreements reached after enforcement actions were brought against it by the State of Michigan, including but not limited to the following:

(a) February 24, 1994: Wal-Mart executed an Assurance of Discontinuance ("Assurance") under the MCPA. A copy of the Assurance is attached as Exhibit 1 and incorporated herein by reference. The Assurance was filed with the Ingham County Circuit Court on or about March 18, 1994. The Assurance constituted a written, express contract pursuant to which Wal-Mart promised to, among other things, comply with the provisions of the Item Pricing Act.

(b) Between May 26 and August 1999: Investigative audits of several Wal-Mart retail establishments by agents from the Consumer Protection Division of the Department of Attorney General and the Department of Agriculture, Motor Fuels Quality Weights & Measures Section found that Wal-Mart failed to comply with the Item Pricing Act in failing to individually identify the retail price on the majority of its shelf stock and failing to properly list and post in a conspicuous place any items that Wal-Mart might legally have chosen not to individually price.

(c) August 27, 1999: Notice of Intended Action (NIA) issued against Wal-Mart under subsection 9(2) of the Item Pricing Act, and subsection 5(2) of the MCPA. The NIA alleged that the investigation of Wal-Mart store locations determined that numerous consumer items at each of the stores were not marked with an item price.

(d) August 30, 2000: Wal-Mart executed a (second) Assurance of Discontinuance under the Item Pricing Act and the MCPA. The Assurance was filed with the Ingham Circuit Court on September 19, 2000. Pursuant to this Assurance, Wal-Mart promised to, among other things:

- i. Have all of its Michigan stores in full compliance with the Item Pricing Act and MCPA;
- ii. Conduct monthly and quarterly pricing audits to assure compliance with the item pricing law;
- iii. Post on a clear, conspicuous sign ("exemption list"), located in the Customer Service Area in each store the items that Wal-Mart will not be individually marking pursuant to MCL 445.353(3);

- iv. Post the price of the above exempted items in immediate conjunction with the area in which the unmarked item is displayed, in compliance with the signage requirements of MCL 445.353(4);
- v. Pay \$125,000 as a civil penalty and \$25,000 to reimburse the State for its legal, investigative, and administrative costs of enforcement.

A copy of the Assurance is attached as Exhibit 2 and incorporated herein by reference.

6. While not conducting formal audits, the Michigan Department of Agriculture has, on numerous occasions, provided notice to various Wal-Mart store locations of their noncompliance with the Item Pricing Act by failure to item price specific consumer items and utilization of noncompliant pricing exemption lists. On each such occasion, the store location was subject to inspection, provided notice of the inspection results, and afforded an opportunity to bring the store into compliance. Store locations subject to notice of violation and opportunity for compliance from May 9, 2003 to November 22, 2005 include, but are not limited to, the following:

309 Updyke, Auburn Hills, on December 14, 2004;

3921 Wilder, Bay City, on November 14, 2004 and November 22, 2004;

G5323 E. Court, Burton, on March 15, 2005;

2200 Mitchell, Cadillac, on November 22, 2005;

1121 E. Caro Road, Caro, on June 9, 2003 and January 20, 2005;

1680 Packard Highway, Charlotte, on November 19, 2003, November 2, 2004, and November 23, 2005;

800 E. Chicago, Coldwater, on April 22, 2005;

3999 Alpine Avenue, Comstock Park, on March 2, 2004, and December 16, 2004;

3700 Owen Road, Fenton, on August 15, 2003 and August 27, 2003;

G 4313 Corunna Road, Flint, on August 27, 2003 and March 16, 2004;

7083 W. 48th Street, Fremont, on December 21, 2004;

5452 Kenawa, Grandville, on May 10, 2005;

2629 N. Park Drive, Holland, on February 23, 2005, July 19, 2005, and August 2, 2005;

3599 Grand River, Howell, on May 9, 2003 and November 15, 2005;

3225 US 41 West, Marquette, on July 25, 2005 and October 14, 2005;

910 Joe Mann Boulevard, Midland, on September 28, 2005;

5110 Times Square, Okemos, on December 15, 2003, January 5, 2004 and May 23, 2005;

1600 Anderson Road, Petoskey, on August 18, 2003, September 27, 2004, August 1, 2005 and August 24, 2005;

28804 Gratiot, Roseville, on January 22, 2004, December 16, 2004, January 10, 2005, July 21, 2005 and October 31, 2005;

5860 Bay Road, Saginaw, on January 22, 2004, January 6, 2005, and May 10, 2005;

44575 Mound Road, Sterling Heights, on November 30, 2005;

2001 Maple Road, Troy, on June 21, 2004;

29240 VanDyke, Warren, on July 29, 2003, August 13, 2003 and December 9, 2004;

9190 Highland Avenue, White Lake, on May 12, 2003, September 20, 2004, October 11, 2004, December 1, 2004 and July 13, 2005.

7. Between December 1, 2005 and January 1, 2006, agents from the Department of Attorney General surveyed five Michigan Wal-Mart store locations for compliance with the Michigan Item Pricing and Consumer Protection Acts.

8. At each of the five stores surveyed, numerous items did not have the price stamped or affixed to the item, including:

309 Opdyke, Auburn Hills, where only 280 of 800 randomly-selected items were item priced;

2629 North Park Drive, Holland, where only 425 of 917 randomly-selected items were item priced;

6065 Gull Road, Kalamazoo and 1680 Packard Highway, Charlotte where, collectively, only:

- a) 63 of 100 randomly selected hardware items were priced;
- b) 155 of 310 randomly selected grocery items were item priced; and
- c) 21 of 100 randomly selected paper and cleaning products were item priced.

9. Four of the five stores surveyed in December, 2005 did not post an exemption list in the Customer Service Area or other conspicuous place listing classes of items the stores might legally have chosen not to individually price.

10. The one store that did post an exemption list refused to honor the Wal-Mart Returns Policy expressly posted on the Wal-Mart Website and provided in response to direct telephonic inquiry. The same store refused to accept timely return of certain items purchased by Department of Attorney General agents as part of the above survey, before and even after identification of the regulatory purpose of the purchase and return.

11. In February, 2006, several agents from the Department of Attorney General conducted more extensive investigative audits of five additional Wal-Mart store locations for purposes of determining compliance with the Item Pricing Act and MCPA. These stores were located at:

800 East Chicago, Coldwater;

3599 Grand River, Howell;

5110 Times Square, Okemos;

28804 Gratiot, Roseville; and

5860 Bay Road, Saginaw.

12. At each store, multiple investigators each reviewed thousands of items.

13. At each of the additional five stores investigated, vast numbers of items did not have the price stamped or affixed to the item, in violation of section 3 of the Item Pricing Act.

14. Two of the stores surveyed did not post an exemption list in the Customer Service Area or other conspicuous place; (Okemos, Roseville store locations.)

15. The list(s) of exempted pricing items posted at the remaining Wal-Mart locations failed to comply with sections 3(3) and 3(5) of the Item Pricing Act, for reasons including but not limited to:

(a) Lists were not posted clearly and conspicuously. In particular, at two locations (Coldwater and Howell) the exemption list was very difficult to read, listing numerous items in small print on one-half of an 8 ½ by 11 sheet of plain white paper hung at the side of the Customer Service desk. Another store location (Saginaw) posted an 8 ½ by 11 exemption list, also on plain white paper, on a bulletin board along with numerous other papers, that one investigator specifically looking for the list was unable to locate;

(b) Utilizing broad product categories, such as "windshield solvent" and "deep pocket pillows", that include items that vary in price and size other than weight or volume, and do not satisfy the definition of "class of item" provided by section 1(c) of the Item Pricing Act; MCL 445.351(c).

16. Investigation revealed that approximately twenty-five to eighty percent of stock surveyed by agents at the above Wal-Mart store locations was not properly priced as required by section 3(1) of the Item Pricing Act.

II. VIOLATIONS OF MICHIGAN LAW

17. The conduct described above violates section 3 the Pricing and Advertising of Consumer Items Act, MCL 445.353 which provides, in pertinent part:

(1) The total price of a consumer item displayed or offered for sale at retail shall be clearly and conspicuously indicated in Arabic numerals, so as to be readable and understandable by visual inspection, and shall be stamped upon or affixed to the consumer item. If the consumer item is in a package or container, the total price shall be stamped upon or affixed to the outside surface of the package or container and need not be placed directly upon the consumer item.

* * *

(3) In addition to the exemptions allowed in subsection (2), a retailer may choose to not individually price mark not more than 25 classes of items or individual items which classes or items shall be listed and posted in a conspicuous place in the retail store, and may choose to not individually price mark not more than 25 additional classes or items or individual items which are advertised or featured at a reduced price.

(4) The price and the name or description of a class of items or individual items not marked pursuant to subsection (3) shall be indicated by a clear, readable, and conspicuous sign in immediate conjunction with the area in which the unmarked item or class of items is displayed.

18. Subsection 9(5) of the Item Pricing Act, MCL 445.359(5) provides:

A person who knowingly violates this act or the terms of an injunction, order, decree, or judgment issued pursuant to this section shall forfeit and pay to the state a civil penalty of not more than \$1,000.00 for the first violation and not more than \$5,000.00 for the second and any subsequent violation. For purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction, the cause shall be continued, and the attorney general may petition for recovery of a civil penalty as provided by this section.

19. Wal-Mart was repeatedly put on formal notice of violations of the Item Pricing Act and thus had knowledge that its retail outlets were in persistent violation of the Item Pricing Act. Accordingly, Wal-Mart is liable for and should be assessed the maximum allowable civil penalty for each violation and subsequent violations at each of its Michigan retail outlets pursuant to subsection 9(5) of the Item Pricing Act.

20. The conduct described above also violates Section 3 (1) of the Michigan Consumer Protection Act, MCL 445.903 (1), which defines unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce as follows:

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

(u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

21. Wal-Mart was repeatedly put on formal notice and thus had knowledge that its retail outlets were in persistent violation of the MCPA. Accordingly, Wal-Mart is liable for and should be assessed the maximum allowable civil penalties for each of the violations and subsequent violations at each of its Michigan retail outlets pursuant to section 5 of the MCPA.

III. AUTHORITY OF THE ATTORNEY GENERAL

The Attorney General proceeds under section 9 of the Pricing and Advertising of Consumer Items Act, MCL 445.359, which provides, in part:

Sec. 9(1) The attorney general may maintain an action to enjoin a continuing violation of the act. If the court finds that the defendant is violating or has violated this act, it shall enjoin him from a continuance of

that violation. It shall not be necessary that actual damages to a person be alleged or proved.

The Attorney General also proceeds under section 5 of the Michigan Consumer Protection Act, MCL 445.905, which provides, in part:

(1) When the attorney general has probable cause to believe that a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful pursuant to section 3, and upon notice given in accordance with this section, the attorney general may bring an action in accordance with principles of equity to restrain the defendant by temporary or permanent injunction from engaging in the method, act, or practice. The action may be brought in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in this state, in the circuit court of Ingham county. The court may award costs to the prevailing party. For persistent and knowing violation of section 3 the court may assess the defendant a civil penalty of not more than \$ 25,000.00.

IV. RESPONDENT'S OPPORTUNITY TO COMPLY WITH MICHIGAN LAW

Within ten days after receiving this notice, Wal-Mart has the opportunity to cease and desist the conduct described above and to inform the Attorney General of Respondent's decision. If Wal-Mart, Inc. elects to cease and desist, that fact will be taken into consideration by this office in determining whether to file a lawsuit against Wal-Mart, Inc.

Wal-Mart may, within 10 days after receiving this notice, request an opportunity to confer with a representative of the Attorney General in person, by counsel or by other representative and the Attorney General.

Instead of filing a lawsuit against Wal-Mart, the Attorney General may accept a formal Assurance of Discontinuance in accordance with section 9(3) of the Pricing and Advertising of Consumer Items Act and/or section 6 of the Michigan Consumer Protection Act, that the alleged

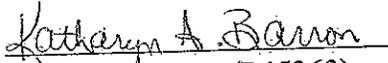
unlawful practice will be discontinued and that corrective action will be taken. That Assurance of Discontinuance must include, among other things, a provision for payment of a substantial civil penalty and reimbursement of the costs of the investigation.

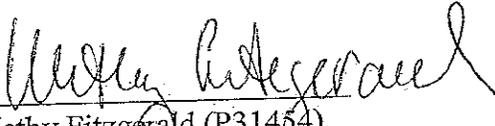
V. CONSEQUENCES OF RESPONDENT'S VIOLATIONS

After Wal-Mart has been provided with an opportunity to confer, and unless an Assurance of Discontinuance is accepted, or it is determined that there is no cause for action, the Attorney General will be authorized to file a lawsuit against Wal-Mart in Circuit Court.

If Wal-Mart decides to exercise its opportunity to confer before the lawsuit is filed, Wal-Mart must contact the undersigned Assistant Attorney General within ten days after receipt of this Notice to avoid the institution of legal action in Circuit Court.

MICHAEL A. COX
ATTORNEY GENERAL


Katharyn Bairon (P45363)
Division Chief


Kathy Fitzgerald (P31454)
Assistant Attorney General
Consumer Protection Division
P.O. Box 30213
Lansing, MI 48909
(517) 335-0855

Dated: 3-1-06

A TRUE COPY

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

1629

IN THE MATTER OF:

No. 94-76610-CP

WAL-MART STORES, INC., d/b/a
WAL-MART and SAM'S CLUB

Hon. Peter D. Houk

702 S.W. 8th Street
Bentonville, AR 72716-8095

ASSURANCE OF DISCONTINUANCE

FRANK J. KELLEY
Attorney General

Frederick H. Hoffecker P15029
Assistant Attorney General

Consumer Protection Division
P.O. Box 30213
Lansing, MI 48909
517-335-0855

Dated: March 18, 1994

STATE OF MICHIGAN

DEPARTMENT OF ATTORNEY GENERAL

IN THE MATTER OF:

WAL-MART STORES, INC., d/b/a/
WAL-MART and SAM'S CLUB

702 S. W. 8th Street
Bentonville, AR 72716-8095

ASSURANCE OF DISCONTINUANCE

NOW COME FRANK J. KELLEY, Attorney General of the State of Michigan, and WAL-MART, INC., doing business as Wal-Mart and Sam's Club, hereafter Respondent or Wal-Mart, who jointly agree to enter into an Assurance of Discontinuance pursuant to Section 6 of the Michigan Consumer Protection Act, MCL 445.901 et seq; MSA 19.419(1) et seq as follows:

1. Respondent is primarily engaged in Michigan in the business of selling goods to consumers for personal, family or household purposes. Respondent also sells some goods for business use or resale to consumers.

2. Respondent previously engaged in the practice of in-store price comparisons with its competitors through the use of:

- A. Market baskets;
- B. Shelf end displays; and
- C. Shelf placards

3. In accordance with Section 6 of the Michigan Consumer Protection Act, supra, and without admitting any violation of the Act, Respondent assures the Attorney General that Respondent will not engage in unfair or deceptive acts or practices in the conduct of any future comparative price advertising program in Michigan, including but not limited to:

A. It will not make or utilize any claim that a specific item price is lower than a competitor's for an identical or comparable product without verification prior to the comparison that the compared price does not exceed the price at which the named competitors have been selling identical or comparable merchandise immediately preceding Wal-Mart's claim.

B. It will not lower an item's price solely to achieve a favorable price comparison with a competitor.

C. It will not leave comparative price signs in place after it knows, or should know, that the comparison was not accurate when made, and it will verify the continuing accuracy of comparative price signs in place for any longer than a one week period on a weekly basis. Further, any comparative price signs shall clearly identify the date on which each price comparison was made.

D. It will not compare products in its stores which are different in size, quantity, model, or quality from those to which they are being compared.

E. It will not use any "market basket" or "survey-based" price comparisons, unless (1) the Wal-Mart employees responsible for pricing Wal-Mart's products do not know which items have been selected for the "Market Basket" or "survey-based" price comparison prior to its completion; and (2) the claim does not generalize the results of the price comparison if product categories have been systematically excluded, unless any exclusion is clearly disclosed in the advertising.

F. It will not compare a multiple item package price with the individual item price of that product by a competitor when the multiple package is specially packaged for Respondent and not otherwise generally available to others in the market.

G. Respondent will comply with the provisions of the Item Pricing and Deceptive Advertising Act, MCL 445.351 et seq., as that law applies to Respondent's business.

4. This Assurance of Discontinuance does not constitute an admission of guilt by Respondent, and this Assurance of Discontinuance may not be introduced into evidence in any other proceeding.

5. In accordance with Section 6(2) of the Michigan Consumer Protection Act, supra, this Assurance of Discontinuance may be filed with the Circuit Court for the County of Ingham and, if necessary, may be enforced by that Court.

WAL-MART STORES, INC., d/b/a
WAL-MART and SAM'S CLUB

[Handwritten signature]

Dated: 2/24/94

FRANK J. KELLEY
Attorney General

[Handwritten signature]
Frederick H. Hoffecker, P15029
Assistant Attorney General

Dated: March 18, 1994

Consumer Protection Division
P.O. Box 30213
Lansing, MI 48909
(517) 335-0855

TRUE COPY

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

IN THE MATTER OF:

No. 00-91267-CP

WAL-MART STORES, INC.,

Hon. Michael G. Harrison

Respondent.

AG No. 9905489

ASSURANCE OF DISCONTINUANCE

JENNIFER M. GRANHOLM
Attorney General

By: Stanley F. Pruss (P33718)
Assistant Attorney General
Consumer Protection Division
P.O. Box 30213
Lansing, MI 48909
517-335-0855

Date Filed: September 19, 2000

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

IN THE MATTER OF:

WAL-MART STORES, INC.

AG No. 9905489

ASSURANCE OF DISCONTINUANCE

The Complainant is Jennifer M. Granholm, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan. The Respondent is Wal-Mart Inc. ("Wal-Mart").

This Assurance of Discontinuance ("Assurance") concerns the resolution of alleged violations of the Pricing and Advertising of Consumer Items Act (the "PACIA"), MCL 445.351, et seq; and the Michigan Consumer Protection Act (the "CPA"), MCL 445.901 et seq. Wal-Mart agrees not to contest (a) the authority of the Department of Attorney General to execute this Assurance; or, (b) any terms or conditions set forth herein.

The entry of this Assurance by Wal-Mart is neither an admission of liability with respect to any issue dealt with in this Assurance nor is it an admission or denial of any factual allegations or legal conclusions stated or implied herein.

The Parties agree that the terms and conditions of the Assurance are fair, reasonable and consistent with the public interest and the doctrines of applicable law.

I. JURISDICTION

The Ingham County Circuit Court has jurisdiction over the subject matter of this action pursuant to MCL 445.359(1) and MCL 445.905(1). The Court also has personal jurisdiction over the Respondent for the enforcement of this Assurance. Respondent waives all objections and defenses that it may have as to the jurisdiction of the Court or to venue in this Court.

II. PARTIES BOUND

2.1 This Assurance shall apply to and be binding upon Wal-Mart and its successors. Wal-Mart is responsible for compliance with the terms of this Assurance, and shall ensure that all of its Michigan retail outlets are in compliance with the terms and conditions of this Assurance.

2.2 The signatories to this Assurance certify that they are authorized to execute and legally bind the parties they represent.

III. DEFINITIONS

3.1 "Class of item" shall have the meaning provided in MCL 445 351(c).

3.2 "Assurance" means this Assurance and any appendix hereto.

3.3 "Respondent" means Wal-Mart.

3.4 "Wal-Mart retail outlets" means any and all Wal-Mart stores presently open to the public in Michigan and any additional stores opened by Wal-Mart in Michigan in the future.

3.5 "Parties" means the Complainant and Respondents.

3.6 "Complainant" means Jennifer M. Granholm, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan.

3.7 All other terms shall have the meaning specifically defined in the PACIA and the CPA.

IV. STATEMENT OF PURPOSE

In entering into the Assurance, the mutual objective of Complainant and Wal-Mart is to resolve, without litigation, the alleged violations of the PACIA and CPA, the demand for payment of civil penalties, and the reimbursement of costs and expenses incurred by the Departments of Attorney General and Agriculture in investigating this matter and enforcing the PACIA and CPA.

V. IMPLEMENTATION OF COMPLIANCE MEASURES

5.1 Wal-Mart shall have all of Wal-Mart's Michigan retail outlets in full compliance with the PACIA and the CPA on or before August 1, 2000.

5.2 Wal-Mart shall immediately implement and continuously comply with the terms and conditions of the following Price Verification Policy:

A. At all times Wal-Mart shall maintain adequate resources including, but not limited to, appropriate staffing levels, equipment and signage to fully comply with the PACIA and the CPA.

B. Wal-Mart shall utilize the Customer Satisfaction Cards located at each register to record item pricing errors noted by the cashiers. On a daily basis the cards shall be sent to the store manager's office and distributed to the department managers responsible for the offending item for immediate correction.

C. Prior to the 25th of each month, a member of management will complete a compliance price check along with the Store Manager in each Michigan Wal-Mart store. Errors shall be noted and attached to the written report that is reviewed and signed by the Store Manager. The management associate responsible for the department with offending items shall work with the hourly department manager to effect immediate correction.

D. Wal-Mart District Managers shall audit each of their Michigan stores along with the Store Manager on a quarterly basis to assure compliance with item pricing laws. The STAR (Store Total Activity Report) Report shall be utilized to check compliance. Results shall be maintained in written form by the District Manager. Following each audit, a plan of action shall be devised to correct any errors.

5.3. The monthly and quarterly pricing audits shall be written and retained for a one

(1) year period commencing August 1, 2000. The reports shall be made available to Complainant upon request. The written pricing audits shall not be admissible as evidence to prove a violation of the PACIA or the CPA, however, the pricing audit reports may be offered into evidence for any other purpose as it relates solely to the PACIA, CPA or this Assurance. The absence of the pricing audit reports may be introduced as evidence pursuant to MRE 803(7) to prove a violation of this Assurance.

5.4 Pursuant to MCL 445.353(3), Wal-Mart may designate up to 25 classes of items or individual items that will not be individually price marked, provided the classes of items or individual items are listed and posted on a clear, readable and conspicuous sign located in the Customer Service Area in each Wal-Mart retail outlet. In addition, Wal-Mart must comply with the signage requirements of MCL 445.353(4).

VI. PAYMENT OF CIVIL PENALTY

6.1 Wal-Mart shall pay to the State of Michigan the sum of \$250,000 as a civil penalty. Payment of \$125,000 shall be made within thirty (30) days of the entry of this Assurance. Payment of the remaining \$125,000 shall be made on or before January 1, 2001 subject to subsection 6.2.

6.2 The second payment of \$125,000 shall be waived if state investigators determine that Wal-Mart is in full compliance with the PACIA during the period August 1, 2000, through December 31, 2000. In the event no inspection or investigation is performed, it shall be presumed that Wal-Mart is in full compliance with the PACIA.

6.3 Payment shall be made by check payable to the "State of Michigan" and remitted to the Assistant-In-Charge, Stanley F. Pruss, Consumer Protection Division, PO Box 30213, Lansing, MI 48909. The check shall reference *Wal-Mart, Assurance of Discontinuance, No. 9905489, Dept. of Ag. Consumer Protection Section.*

VII. REIMBURSEMENT OF COSTS AND EXPENSES

7.1 Within thirty (30) days of the entry of this Assurance, Wal-Mart shall pay the sum of \$25,000.00 to the State of Michigan to reimburse the state for its legal, investigative and administrative expenses relating to historical compliance efforts directed at Wal-Mart.

7.2 Payment shall be remitted in the same manner as specified in subsection 6.3.

VIII. DISPUTE RESOLUTION

8.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Assurance and shall apply to all provisions of this Assurance. Any dispute that arises under this Assurance shall in the first instance be the subject of informal negotiations between the parties. The period of negotiations shall not exceed ten (10) days from the date of written notice by any party that a dispute has arisen, but it may be extended by agreement between the parties. The period for informal negotiations shall end when Complainant provides a written statement setting forth its proposed resolution of the dispute to Wal-Mart.

8.2 If the parties fail to resolve a dispute by informal negotiations, then the dispute shall be resolved in accordance with the resolution proposed by the Complainant unless, within ten (10) days after receipt of the Complainant's proposed resolution, Wal-Mart files a petition for resolution with the Ingham Circuit Court setting forth the matters in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Assurance.

IX. COVENANT NOT TO SUE BY COMPLAINANT AND RESERVATION OF RIGHTS

9.1 In consideration of the implementation of compliance measures, the payment of the civil penalty and the reimbursement of the costs and expenses that will be made by Wal-Mart under the terms of this Assurance, and except as specifically provided in this Section,

Complainant covenants not to sue or to take administrative action against Wal-Mart for Covered Matters.

9.2 "Covered Matters" shall include any liability to the State of Michigan for the following:

- (a) All claims for violations of the PACIA and the CPA through the period August 1, 2000;
- (b) Payment of all civil penalties for violations of the PACIA and the CPA through August 1, 2000; and
- (c) Reimbursement of costs and expenses incurred by the Departments of Attorney General and Agriculture through August 1, 2000.

9.3 The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in "Covered Matters" in paragraph 9.2. Complainant reserves, and this Assurance is without prejudice to, all rights against Wal-Mart with respect to all other matters including, but not limited to, the following:

- (a) Liability arising from a violation by Wal-Mart of a requirement of this Assurance;
- (b) Liability for violations of the PACIA and the CPA that occur after August 1, 2000.

X. NOTICES

All notices, deliveries or other communications required or permitted hereunder shall be in writing and shall be deemed given when sent by facsimile transmission and confirmed by certified or registered mail (unless otherwise specified) addressed as follows:

- a) If to Complainant:
Consumer Protection Division
PO Box 30213
Lansing MI 48909

b) If to Wal-Mart:
Sallie Stroud
Vice-President, Assistant General Counsel
Wal-Mart Stores, Inc.
702 S.W. 8th Street
Bentonville, AR 72716-8095

XI. GENERAL PROVISIONS

11.1 This Assurance shall be binding upon, inure to the benefit of, and apply to the parties and their successors-in-interest. This Assurance shall not create any private rights or causes of action in any third-parties.

11.2 No change or modification of this Assurance shall be valid unless in writing and signed by both parties.

XII. APPLICABLE LAW

This Assurance shall be construed in accordance with and governed by the internal laws of the State of Michigan.

XIII. TERMINATION

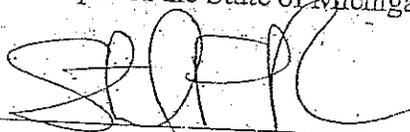
If all substantive terms of this Assurance are met by Wal-Mart, this Assurance shall terminate on September 1, 2001 except that the requirements of Sections V, VIII and IX shall survive. The parties shall be allowed to reopen this Assurance for purposes of addressing any matters arising under Sections V, VIII or IX and this Court shall have continuing jurisdiction for such purposes.

Jennifer M. Granholm, Attorney General, on behalf
of the People of the State of Michigan.

Dated:

9/19/00

By:



Stanley F. Pruss (P33718)
Assistant Attorney General

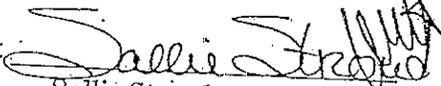
Consumer Protection Division
PO Box 30213
Lansing MI - 48909
517-335-0855; Fax 517-335-1935

Wal-Mart Stores, Inc.

Dated:

8-30-00

By:



Sallie Stroud
Vice-President, Assistant General Counsel

Wal-Mart Stores, Inc.
702 S.W. 8th Street
Bentonville, AR 72716-8095
501-273-4505; Fax 501-277-5991