46% returned to weekly smoking by the next year's measurement period. 14

The study found that "students who smoke are increasingly unlikely to quit

as they get older." 15

Effectively prohibiting sales to people younger than 18 years of age will therefore help reduce the number of adolescents and youths who become daily smokers. FDA also selected the age limit of 18 to be consistent with the 1992 Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reorganization Act 16 that conditions receipt of substance abuse grants on States adopting laws prohibiting the sale and distribution of cigarette and smokeless tobacco products to minors under age 18, and because the majority of States have set 18 as the age of purchase of these products.

1. Section 897.10—General Responsibilities of Manufacturers, Distributors, and Retailers

Proposed 897.10 would describe the general responsibilities of manufacturers, distributors, and retailers, and would make manufacturers, distributors, and retailers responsible for ensuring that the cigarettes and smokeless tobacco products they manufacture, label, advertise, package, sell, distribute, or otherwise hold for sale comply with all the applicable regulations under proposed Part 897.

2. Section 897.12—Additional Responsibilities of Manufacturers

Proposed 897.12 would provide that, in addition to its other responsibilities, each manufacturer would be responsible for removing all self-service displays, violative advertising, labeling, and other manufacturer- or distributor-supplied items from each point of sale. Proposed § 897.12(b) would require each manufacturer to monitor, through visual inspection on each visit to a point of sale (carried out in the normal course of the manufacturer's business), to assure the proper labeling, advertising, and distribution of its products. This provision would not create a new responsibility or burden for companies (typically the smaller ones) who do not visit retail locations as part of their usual business practice. The obligation to inspect exists only for those companies (typically the larger ones) for whom visits are part of their usual business practice.

Further, because there are detailed contracts between the larger cigarette manufacturers and retailers, proposed 897.12 should not impose a significant burden on these manufacturers. For example, a Non-Self-Service Carton

Shelf Plan for the R.J. Reynolds Tobacco Co. specified that " [t]he height of the top shelf cannot exceed 72 inches and must have a height capacity of seven cartons * * * " and that the cigarette display or shelves "* * * must be in total view of the consumer * * * " and "* * * may not be placed more than 10 feet from point-of-purchase." 17 Another plan, titled "R.J. Reynolds Tobacco USA Savings Center Display Plan," created six different pay scales for retailers; the retailers would receive more money if they sold a large volume of cigarettes. Under this plan, R.J. Reynolds would also provide a "merchandiser" to display its products, and the retailer would agree to stock the "designated RJR shelf rows" "no less than five cartons high," and not alter the shelves or reduce the amount allocated to R.J. Reynolds products. 18 In both plans, the retailer also agreed to permit R.J. Reynolds representatives to "plan-ogram, adjust, and divide its allocated space as deemed necessary" and to "make reasonable audits of performance and to inspect and rotate R.J.R's products in stores under contract." 19

Former sales representatives and managers interviewed by FDA stated that manufacturers keep extremely detailed records about each retailer. Some records noted whether the retailer should be visited weekly, biweekly, monthly, etc.; other entries included the types of displays in the retailer's establishment. At least one company also gave portable computers to its representatives; the data entered into these computers were downloaded nightly and sent to company headquarters. These detailed contracts and records demonstrate that the manufacturers are heavily involved in establishing and maintaining retailers' displays and that the proposed rule's requirements that each manufacturer be responsible for removing violative advertising, labeling, and self-service displays, and for performing a visual inspection on each subsequent business call are both feasible and reasonable.

3. Section 897.14—Additional Responsibilities of Retailers

Proposed 897.14 would establish additional responsibilities for retailers. Proposed 897.14(a) would require the retailer or the retailer's employees to verify that people who intend to purchase cigarettes or smokeless tobacco products are legally entitled to do so. Verification would be by direct visual inspection of each prospective purchaser and, if necessary, would include the use of a photographic identification card with a birth date. Examples of documents that would be

acceptable are a driver's license or a college identification card. The proposal would require an identification card with a picture and a birth date because such identification cards are more reliable than other forms of identification. FDA invites comment on whether the final rule should contain more specific requirements concerning the types of identification that would comply with this provision.

The agency has found strong support for the additional retailer responsibilities that this section would impose. According to a recent report endorsed by 26 State attorneys general, industry training films and programs used by retailers regarding tobacco sales had little or no impact on preventing illegal sales to minors and, in some retail sectors, high employee turnover rates complicated training efforts. Moreover, determining a young customer's age through visual examination alone proved to be difficult. Thus, the attorneys general recommended requiring proof of age of anyone who does not appear to be at least 26 years old.20

Additionally, studies indicate that minors who are able to purchase cigarettes and other tobacco products from stores are rarely asked to verify their age. For example, in one study, 67 percent of minors (mean age: 15 years) were asked no questions when they attempted to purchase cigarettes.21 Store cashiers tried discouraging the minors from buying cigarettes in only 7 percent of the spot checks conducted by the authors. In 14 percent of the cases, the cashiers actually "encouraged the minor's purchase by offering matches, suggesting a cheaper brand, or offering to make up the difference if the minor was 'short on cash'." 22

In another report, five minors between the ages of 13 and 16 were sent to various locations to buy cigarettes. Despite signs at some locations that prohibited entry by persons under the age of 21, the minors were able to buy cigarettes, even when they admitted they were under 21. For smokeless tobacco products, studies show that half of the stores examined were willing to sell smokeless tobacco products to minors.²³ In contrast, in Everett, WA, where a local ordinance required proof of age if the prospective buyer did not appear to be of legal age to purchase cigarettes, over 60 percent of students between the ages of 14 and 17 reported being asked for proof of age when they attempted to buy cigarettes, and tobacco use, among 14 to 17-year-olds, declined from 25.3 percent to 19.7 percent overall.24