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**COMMENTS OF WAL-MART STORES, INC.
REGIONAL GREENHOUSE GAS INITIATIVE
DRAFT MODEL RULE**

INTRODUCTION

Wal-Mart Stores, Inc. ("Wal-Mart") appreciates the opportunity to comment on the draft Model Rule of the Regional Greenhouse Gas Initiative and applauds the participating states for their collective commitment to address this important issue in a common manner and after substantial public input.

As the largest retail company in the world, the largest private consumer of electricity in the United States and the owner of the largest private heavy-duty truck fleet in the country, Wal-Mart recognizes that its activities result in significant direct and indirect greenhouse gas ("GHG") emissions. However, the scope and scale of Wal-Mart's business also enable the company to effectuate substantial improvements on a large scale.

As part of its corporate commitment to sustainability, Wal-Mart is committed to substantially reducing its GHG emissions and its impact on the world's climate. On October 25, 2005, Wal-Mart's CEO Lee Scott announced this commitment, stating: "We believe every company has a responsibility to reduce greenhouse gases as quickly as it can. Wal-Mart can help restore balance to climate systems, reduce greenhouse gases, save money for our customers, and reduce dependence on foreign oil."^{1/}

Wal-Mart's goals with respect to GHG reductions are both specific and aggressive:

- Reduce greenhouse gases emitted as a result of the operations at its existing stores, clubs and distribution centers around the world by 20 percent over the next 7 years.
- Design and open a prototype building that is 25-30 percent more efficient and will produce up to 30 percent fewer greenhouse gas emissions within the next 4 years.
- Increase trucking fleet efficiency by 25 percent in the next 3 years, and double efficiency in the next 10 years.

^{1/} A transcript of Mr. Scott's October 25, 2005 presentation can be found on Wal-Mart's website at <http://walmartstores.com/Files/21st%20Century%20Leadership.pdf>.

- Share Wal-Mart's experience and technology with others around the world, including our competitors, in recognition that the more companies that adopt environmentally sensitive technologies, the more the cost of such technologies will decline, thus enabling needed change without adverse economic impact.
- Implement a program in the United States over the next 18 months that assists its suppliers in identifying cost-effective ways to reduce their greenhouse gas emissions and establish a preference for doing business with those suppliers that aggressively reduce their own emissions.
- Aggressively pursue regulatory and policy changes that will create incentives to invest in energy efficiency and low or no greenhouse gas sources of electricity and reduce barriers to integrating these sources into the power grid, seeking common approaches nationwide to the extent possible.

Wal-Mart takes these goals seriously. The company's focus on the reduction of GHG emissions is part of a culture of sustainability that Wal-Mart seeks to incorporate in all aspects of its business. The company believes that the focus on sustainability will benefit not only the environment, but also its business and most importantly its customers. Wal-Mart's top priority is always the well-being of its customers. The company believes that its interests will be best served if sustainable, climate-friendly technologies, products and practices can readily be employed for the benefit of, and made available to, the largest possible number of consumers, regardless of their means.

The comments that follow on the issues raised by the draft Model Rule are offered in the hope that RGGI's goals can be advanced in a way that more fully aligns RGGI with the interests of consumers as well as businesses that are committed, as Wal-Mart is, to responding to the serious challenge of climate change. Wal-Mart wants to work with government at all levels to promote a common, consistent set of policies across the United States that will encourage and reward those businesses that are prepared to act to reduce the threat of global climate change and thereby advance the interests of consumers, the economy and our planet. These comments are offered in that spirit.

I. Cap-and-Trade Is the Right Model

Wal-Mart would support the fundamental structure of RGGI, which imposes a cap on GHG emissions from power plants while providing for tradable offsets and an allowance holdback to encourage specifically targeted activities. Such a system regulates large, direct emitters, while providing incentives for other sectors of the economy to take actions that result in real, verifiable reductions in GHG emissions.

Wal-Mart believes that entities not directly covered by the emissions cap that are willing to take measures to reduce their own GHG footprint should be rewarded and incentivized to do more. As discussed in the comments that follow, modifying the holdback provisions of the draft Model Rule to allow verified projects that reduce electricity use below expected levels to qualify for allowances and expanding the range of activities that qualify for offsets are two means to achieve that end.

II. Allowance Holdbacks

Wal-Mart has already taken substantial steps to reduce GHG emissions, and it is committed to achieving further significant reductions. Wal-Mart is not waiting for RGGI or any other mandatory control system to reduce its GHG impact. At the same time, Wal-Mart is still seeking and identifying additional means, including both new technologies and more climate-friendly business practices, to help it reach all of the ambitious goals it has set for itself. Wal-Mart's ability to achieve its goals, and the speed at which it does so, will depend in part on the structure of the regulatory programs that are put in place. Programs that are structured to incentivize and reward those who undertake projects that result in real, verifiable and permanent reductions in GHG emissions will help to ensure that Wal-Mart and other companies that are making like efforts can substantially contribute to efficient, cost-effective GHG reductions in the near term. Modification of the allowance holdback provisions of the draft Model Rule could serve such a purpose and at the same time ensure that RGGI's GHG reduction targets are met in the most cost-effective manner possible.

RGGI recognizes the importance of energy efficiency and demand-side management in achieving the GHG emissions reductions that RGGI requires. ^{2/} However, it is not clear that, as currently structured, RGGI will create the incentives and rewards to ensure that these means are fully exploited in pursuit of RGGI's goals. The draft Model Rule provides for states to hold back at least 25 percent of the CO₂ allowances they are allocated under RGGI to use for strategic energy purposes or consumer benefits. States have broad discretion in determining what to do with the unallocated allowances. Wal-Mart believes that the Model Rule should be modified to provide—region-wide—for holdback allowances to be made available directly to entities that demonstrate actions they have taken and initiatives they have sponsored have produced real, verified permanent reductions in GHG emissions. Holdback allowances for such purposes could be in addition to or part of the 25-percent holdback provided for in the draft.

Specific examples from Wal-Mart's own recent activities illustrate the substantial potential for GHG reductions if the entities responsible for those reductions can qualify for the holdback allowances. Among the efforts Wal-Mart has underway in its stores are:

- **Daylight Harvesting:** More than 2,000 Wal-Mart stores incorporate skylights and "automatic dimming" systems for interior lighting. This allows adjustment of electric lighting to only the level needed given the amount of sunlight reaching the sales floors of its stores. Wal-Mart estimates that this program saves more than 600,627,600 kWh of electricity annually, which is enough to power more than 53,390 U.S. homes each year.
- **T-8 Lighting:** First in its new stores and now through a retrofit program, Wal-Mart has introduced energy efficient T-8 lighting in its stores. These retrofits result in a 15 to 20 percent reduction in the energy load of each store.

^{2/} RGGI, *Memorandum of Understanding*, at 1 (Dec. 20, 2005), available at http://www.rggi.org/docs/mou_12_20_05.pdf.

- **Cool Roof Technology:** In regions where the climate warrants it, Wal-Mart uses a white reflective roofing membrane that results in a 10 percent reduction in cooling load.
- **High Efficiency HVAC Units:** Wal-Mart HVAC units have SEER ratings between 10.8 and 13.2, compared with the industry standard of 9.
- **LED Exterior Signage:** All new stores and replacement external, internally illuminated signage for existing stores, except Sam's Clubs at the present time, is done with LED technology, which is 70 percent more efficient than fluorescent illumination.

The foregoing examples are important because they represent concrete examples of initiatives that are underway and that measurably and significantly reduce GHG emissions by reducing Wal-Mart's demand for electricity. All of them make sense, but all of them also require investment. They do not represent "business as usual," but rather they are measures Wal-Mart has undertaken—sometimes after considerable trial and error—with the specific goal of reducing its energy use and its environmental footprint. If deployment would qualify for allowances from a RGGI holdback reserve, that could facilitate more rapid deployment of these measures in existing Wal-Mart stores and presumably by other entities as well.

More importantly from the perspective of RGGI's goals, Wal-Mart has not finished its search for energy efficient technologies. Wal-Mart continues to explore new opportunities to further reduce its GHG emissions. It works closely with vendors of energy efficient products and organizations engaged in energy efficiency R&D; it also invests in research and technology that has promise for application within Wal-Mart's operations.

Based on both its ongoing efforts and new strategies that Wal-Mart expects will continue to emerge or become more cost effective over time, Wal-Mart could play a role in RGGI reaching its GHG-reduction objectives. In a very real sense, Wal-Mart or other large users of electricity are better positioned than the electricity generators themselves to bring about cost effective reductions in GHG emissions from power generation in the region by reducing their demand for electricity. Thus, they may be best positioned to provide the lowest cost GHG-reduction methods to contribute to RGGI's goals for reducing GHG emissions.

Although energy efficiency measures make sense in the long run, cost is always a factor in determining which to pursue. Wal-Mart has not been able to pursue all that it has considered. Some efficiency measures are simply cost prohibitive under the current circumstances. By allowing entities like Wal-Mart to earn tradable allowances from a holdback reserve when they verifiably and permanently reduce GHG emissions through energy efficiency projects, RGGI could tip the balance in favor of additional efficiency measures and thereby directly incentivize and reward the results it seeks to achieve.

To the extent Wal-Mart finds successful GHG-reducing strategies that could be implemented within its supplier network, Wal-Mart is committed to sharing those strategies with its suppliers and assisting them in implementing them. Wal-Mart has more than 66,000 supplier organizations in the United States alone. Thus, the potential for additional GHG reductions is substantial. The reality, Wal-Mart has found, is that energy efficient lighting and cooling, to focus on just two examples, do not represent "business-as-usual" among many small and large manufacturers. Whether it is lack of information about the potential benefits or lack of resources

to make the initial investment, existing high-efficiency technology and practices are not widely deployed. For RGGI to succeed, all entities, large and small, must embrace and employ GHG-reducing practices. Wal-Mart is developing policies designed to reward suppliers that adopt climate-friendly practices, but allowing entities to earn RGGI allowances from a holdback reserve when they verifiably reduce their GHG emissions would represent a potentially more direct and substantial incentive that would encourage more rapid deployment.

Wal-Mart is also anxious to spread the news about energy efficiency successes to its competitors, recognizing that wide deployment of such technologies will drive down the cost, to the benefit of all. Again, if such measures could earn allowances directly, that would provide a greater and surer incentive for their deployment throughout the retail sector.

Finally, while the draft Model Rule would allow individual states to use their allowance holdback in support of activities that directly reduce electricity demand, Wal-Mart believes strongly that, until a national program is adopted, a region-wide approach on this issue is vitally important. Wal-Mart participates where feasible with its business interests in the demand-side management and load response programs offered by utilities that supply Wal-Mart's electricity.^{3/} Even for a large company like Wal-Mart, however, it is an expensive, labor-intensive effort to keep track of and apply for the variety of programs that exist and to then demonstrate that particular activities meet the differing requirements of those many programs. The enormous advantage RGGI offers to the probably hundreds of companies that, like Wal-Mart, are present in most or all of the states that are members of RGGI, is its regional scope. Affording companies that achieve verified reductions in their electricity use to directly earn allowances under a single, common set of rules would greatly facilitate, and thereby encourage, broad participation in such efforts.

III. Expanded Opportunities to Obtain Offsets

As agreed in RGGI's initial Memorandum of Understanding (MOU), the draft Model Rule proposes only a narrow range of approved offset activities through which the required GHG emissions reduction requirements can be met. The draft authorizes individual states to add approved offset activities and notes that additional categories may also be added region-wide upon the agreement of member states. Wal-Mart urges RGGI members to turn rapidly to the task of expanding the range of offset activities that qualify region-wide. This could be most efficiently achieved through a stronger emphasis on third-party verification of GHG reductions using recognized protocols, rather than on strict delineation of approved offset activities.

Wal-Mart understands that the choice to impose emissions caps solely on power generation emissions was a considered one, notwithstanding the fact that the transport and industrial sectors likewise account for large GHG emissions. This decision, however, should not

^{3/} By way of example, Wal-Mart participates in or is considering joining separate energy efficiency or load response programs run by ISO-New England, New York ISO and PJM Interconnection, as well as those run by individual utilities involving almost every one of the RGGI states. For Wal-Mart, the same kind of participation is replicated throughout the country, subject to rules and standards that can vary widely.

preclude the recognition, through offsets, of verified GHG emissions reductions achieved in transportation or other GHG-intensive activities.

By way of example, as noted above, Wal-Mart owns the largest private heavy-duty truck fleet in the United States. It consumes approximately 140 million gallons of diesel fuel annually. Wal-Mart's goals of increasing trucking fleet efficiency by 25 percent in the next 3 years and doubling efficiency in the next 10 years could lead to substantial reductions in CO₂ emissions. The availability of RGGI offsets could help Wal-Mart to achieve these aggressive goals.

To reduce its transportation fuel requirements and the resulting GHG emissions, Wal-Mart is implementing the following measures:

- Installing auxiliary power units in its heavy haul-trucks, so that the engines can be turned off when the drivers are resting. Wal-Mart estimates that, when fully implemented, this will save 10 million gallons of fuel and 100,000 metric tons of GHG emissions per year.
- Adding hybrid vehicles to its corporate automobile fleet. Wal-Mart estimates savings of 33,000 gallons of gas and 333 metric tons of GHG emissions per year for each 100 hybrid vehicles it adds.
- Increasing its use of fuel-efficient tires, which produces a 0.5 mpg increase and will save an estimated 10 million gallons of fuel and 100,000 metric tons of GHG emissions per year.
- Funding R&D in the areas of hybrid diesels, hydrogen fuel cells, bio-diesel, improved trucking aerodynamics, and future engine technology; and
- Working with its suppliers to reduce packaging size, which thereby reduces trucking requirements. Wal-Mart estimates 1.2 million metric tons of GHG emissions will be saved by 2015 as part of this initiative.

Some of these efforts can produce GHG reductions today; some offer promise for the future. In either case, provided they achieve independently verified GHG reductions, they are the kind of projects that RGGI should allow to qualify for offsets.

Wal-Mart understands that RGGI sought to ensure that offsets would meet rigorous standards of additionality and permanence. However, RGGI also seeks to provide a "flexible, market-based approach to achieving real emissions reductions at the lowest possible cost." ^{4/} Likewise, RGGI seeks to draw on the learning from other successful cap-and-trade programs. RGGI can meet those objectives by requiring third-party verification under established protocols, including, for example, those of the Executive Board of the Clean Development Mechanism, the U.S. Department of Energy's recently published 1605(b) Guidelines or the WRI/WBCSD GHG Protocol, as a means of assuring rigor in its offset program. By contrast, narrowly constraining the range of approved offset activities creates the

^{4/} RGGI, *Frequently Asked Questions*, at 2 (Dec. 20, 2005), available at www.rggi.org/docs/mou_faqs_12_20_05.pdf.

risk that the cost of reducing GHG emissions will prove higher than necessary and impose unwarranted adverse effects on the economy.

Again, while Wal-Mart recognizes that the draft Model Rule gives individual participating states the flexibility to add more offset programs, a state-by-state approach takes away from the benefit of RGGI as a regional program. To ensure the maximum benefit is derived from RGGI's regional scope, the Model Rule should adopt a more flexible approach to offsets, based on third-party verification, thereby avoiding the need for numerous costly and cumbersome state-by-state rulemakings.

IV. Renewable Portfolio Standards and RGGI

The draft Model Rule announcement specifically solicits comment on whether projects that receive renewable portfolio standards ("RPS") credit should also be eligible for RGGI offset allowances. Wal-Mart strongly supports allowing the same renewable resource to qualify for both RGGI offsets and RPS requirements.

As noted above, one of Wal-Mart's sustainability goals is to supply all of its electricity needs from non-GHG emitting resources to the extent cost permits. This is an extremely ambitious goal. Thus, Wal-Mart has been aggressively seeking out market-priced renewable energy resources to satisfy its load. The clear lesson Wal-Mart has learned is that, in almost all cases, renewable energy remains a premium product. Acquiring competitively priced renewable energy is challenging at best. ^{5/}

Access to climate-friendly energy should not be reserved to the high-end consumer. It should be available to all. RGGI could help make this possible. Thus, Wal-Mart believes that RGGI should be less concerned about whether a particular renewable resource is being over-incentivized and more concerned about supporting the development of cost-competitive renewable energy resources. Access to RGGI offset credits for all renewable resources, even where power is also meeting an RPS quota, can support that objective and advance the goal of broad penetration of greenhouse gas-free energy into the Nation's power

^{5/} Wal-Mart is not alone in reaching this conclusion. Standard & Poor's recently emphasized the difficulties renewable resources have in competing, even with the incentives provided by the Energy Policy Act of 2005:

Standard & Poor's, the rating agency, last week issued a report saying most alternative sources of energy continue to rely on government-related subsidies to be economical and will be difficult to expand without such help.

Tina Vital, an S&P senior equity analyst, said tax incentives in the recently enacted Energy Policy Act of 2005 are providing a short-term boost to some renewable energy projects, including wind. But she said that boost may be too small to finance long-term options to oil and gas.

Jim McKay, *Renewable Energy Still May Be Too Expensive*, Pittsburgh Post-Gazette (Oct. 23, 2005), available at <http://www.post-gazette.com/pg/05296/593043.stm>.

supply. If the results of providing multiple incentives for renewable energy projects are that developers of such projects flock to RGGI states and that there is less fuel-switching toward scarce and expensive natural gas, those should be deemed successes of RGGI, not a failure to appropriately limit incentives.

The rulemaking also requests comment on whether other additional requirements should be imposed in the event renewable energy projects are permitted to participate under both RGGI and an RPS. Although there may be a few discrete exceptions on a project-specific basis, Wal-Mart has not found any types of renewable energy projects that are, as a class, truly cost competitive. Thus, such further tests seem unwarranted and potentially unwieldy to administer. Each of the various means of determining whether a particular project should qualify under both RGGI and RPS in the draft Model Rule raises several questions to consider.

For example, Wal-Mart does not believe a financial additionality test makes sense because it could require a project developer to expend substantial resources to develop a project to the point where it can show, for example, the project's likely internal rate of return. A further question arises whether the test would be applied based only on the financial projections for a project or whether it would also have to be met when the project commences operation. If the latter, that could substantially impede financing because of the uncertainty of how any particular project might fare under such a test. Finally, a financial test would tend to penalize the most efficient and cost-effective renewable resources and incentivize projects that are inefficient or technologies that may be least likely to be competitive without incentives for the long term.

A market penetration test may seem tempting because it offers the promise that innovative technologies will be promoted. Again, however, there is great uncertainty about how such a test might be applied: When and how do you measure market penetration? Must a project qualify at the time the commitment to build is made or when it commences operation? Does a project stop qualifying when the technology it embodies reaches the specified threshold? These uncertainties may make financing such projects impossible and have the further undesirable consequence of punishing successful projects and technologies.

A size threshold is likewise questionable because it bears little relationship to what RGGI is fundamentally about: reducing the large quantities of GHG emissions from large fossil-fuel power plants. While small projects should certainly qualify, encouraging only small projects does not serve the larger, long-term goals of RGGI.

If, despite the concerns of these alternatives, RGGI concludes there should be some limitation on which types of renewable energy projects can qualify for both RGGI and an RPS, RGGI should identify at the outset project types that will qualify, perhaps based on a standard, levelized cost analysis for particular types of renewable projects, and announce a clear, program-wide rule. That will give project developers and power purchasers the certainty they need from the beginning as to whether a project will qualify. Any changes to such a rule should have no retroactive effect.

V. The 5-Percent Market Penetration Cap

The Model Rule provides that, for projects commenced after 2008, a sponsor would have to show that an energy conservation measure has a market penetration of less than 5 percent or that a combustion technology performs at certain specified efficiency standards to qualify for offset credits. Wal-Mart is sensitive to the need to ensure that offset credits are not granted on too broad a basis, but this should be balanced against the reality that broad use of a climate-friendly technology will lower the cost of achieving GHG reductions. As such, the proposed 5-percent market penetration standard is too low.

To best achieve RGGI's goal of reducing GHG emissions at the lowest possible cost, the Model Rule should encourage wide use of new technologies that reduce emissions. The greater the market penetration of a particular technology, the lower the cost is likely to be. As described above, Wal-Mart is committed to finding new GHG-reducing technologies. It has been the company's practice to test new technologies on a pilot basis. Then, for those technologies that prove effective, Wal-Mart seeks to reduce the cost of acquisition by buying on a volume basis. Typically, the broader the deployment, the more cost effective it becomes.

Wal-Mart's size allows it to achieve volume-based savings based on its own purchases, but this option is not likely to be available to smaller entities. The draft Model Rule should have a market-penetration cap that is high enough to ensure that effective GHG-reduction technologies can be acquired on a cost-effective basis. In this regard, one of RGGI's guiding principles is "building on existing successful cap-and-trade programs." ^{6/} The Clean Development Mechanism under the Kyoto Protocol allows projects to qualify if their performance is in the top 20 percent of their category. ^{7/} This might be a reasonable standard for RGGI to borrow because it would appropriately incentivize and allow for deployment on a cost-effective basis of innovative GHG-reduction strategies, while precluding offsets for technologies that have really become "business as usual."

A further difficulty with the 5-percent market penetration test arises from the likely uncertainties associated with its application. It is not clear in the Model Rule how market penetration would be determined and how a company would know if its investment would be eligible. Companies will be reluctant to commit to implementing a new program or technology if the technology is near the market-penetration cap, especially where commitment to a project must be made substantially in advance of actual implementation. The Model Rule should clarify that any market penetration cap will be determined as of the date an entity commits to an investment. In addition, RGGI should provide guidance so that those who seek to qualify for an offset know how market penetration will be determined.

^{6/} RGGI, *About RGGI*, at <http://www.rggi.org/about.htm>.

^{7/} See, e.g., United Nations Framework Convention on Climate Change, *Report of the Fourth Meeting of the Methodologies Panel* (Mar. 17-18, 2003) (stating that paragraph 48(c) of the CDM modalities and procedures for selecting baseline methodologies provides: "the average emissions of similar project activities undertaken in the previous five years, in similar social, economic, environmental and technological circumstances, and whose performance is among the top 20 per cent of their category."), available at <http://cdm.unfccc.int/UserManagement/FileStorage/PWFX0KYPEXLF6WB5QNQH0943JERFIO>.

VI. Eligibility for Offsets of Existing vs. New Buildings

The draft Model Rule allows offsets for projects involving natural gas, oil, and other end-use energy efficiency at existing buildings. There are also provisions for new building eligibility limited to buildings that are designed to replace an existing building and zero net energy buildings. The draft notes that a broader category of eligibility for new buildings will be considered later.

Wal-Mart urges that the provision for replacement of existing buildings be expanded to cover, at a minimum, any circumstance where an existing building is permanently retired from use as the result of the construction of a new building, whether the new building is located on the same site or a new site. Wal-Mart also supports the availability of offsets for end-use energy efficiency in new buildings that may not meet the zero net energy test, but that are significantly more efficient than the industry standard for a comparable use.

Presumably, the rationale for limiting offsets to replacement buildings built on the same project site as the old building is that, in other cases, the old building is presumed to remain in use and to draw energy. In many cases, that may not be true. Thus, the Model Rule should, at a minimum, be clarified to provide for offsets for end-use energy efficiency whenever a new building replaces a building that will no longer be used, whether or not it is at the same project site. Providing for offsets may in some instances create a sufficient incentive to ensure that an old, inefficient facility is retired from use at the time it is replaced.

Moreover, the draft Model Rule would better serve RGGI's long-term objectives of increasing energy efficiency and reducing GHG emissions by more liberally providing offsets for new buildings and expansions of existing buildings so as to create incentives to use the most climate-friendly materials and technologies at the point of construction, when the greatest efficiencies are likely to be achievable. As noted above, Wal-Mart expects that, within 4 years, it will be able to build new stores that are 25-30 percent more efficient than its existing stores.

The availability of RGGI offsets is not going to induce construction of a new building or expansion of an existing building. However, once the decision to construct a new building or expand an existing building has been made, RGGI offsets could provide a significant incentive to maximize the use of GHG emissions reduction technologies. Such incentives are particularly important at that point in time because of the long life expected for a new building or a building expansion.

VII. Project Commencement

Finally, Wal-Mart seeks to clarify what it means to "commence" a project under the draft Model Rule. The Model Rule provides that CO₂ offset allowances may be awarded only for offset projects that are initially commenced on or after December 20, 2005. The Model Rule states that an offset project commences the date of the beginning of an activity "that involves physical construction, other work at a project site, or installation of equipment or materials." ^{8/} Similarly, where an offset project involves the implementation of a management activity or protocol, the project commences the date "on which such activity is first implemented

^{8/} RGGI, Draft Model Rule § XX-10.2(aa).

or such protocol first utilized.” This concept of an “activity or protocol” creates potential tension in the Model Rule as applied to some of Wal-Mart’s initiatives.

For example, if Wal-Mart undertakes a pilot program in one store and then decides to make it a company-wide policy, we understand the Model Rule to mean that the pilot program in the initial store would not be eligible for offsets if it were initiated prior to December 20, 2005, but that expansion to other stores of that program, if it otherwise qualified for offsets, would qualify at any store where the activity commenced after December 20, 2005. In other words, we understand the Model Rule to measure commencement date eligibility on a site-by-site basis. (Virtually all of Wal-Mart’s activities that may qualify for offsets entail some construction or equipment installation.)

Wal-Mart has more than 3,600 stores in the United States, and it is committed to reducing GHG emissions through new and innovative technologies at all of those stores. Wal-Mart typically initiates a program in a limited number of stores to test the efficacy of a new technology or activity. For instance, in many stores, Wal-Mart reclaims waste heat from refrigeration equipment to heat water for the kitchen preparation areas of the store. Wal-Mart can generate 90 to 95 percent of a store’s hot water needs in this manner. Although we recognize that, under the draft Model Rule, stores that implemented this technology prior to December 20, 2005, are not eligible to receive offsets, we interpret the draft to provide that such a program would be eligible for offsets at stores where it is implemented after that date— subject, of course, to meeting all other Model Rule requirements. Any other conclusion would be at odds with the premise of the Model Rule that early action to reduce GHG emissions should be encouraged and rewarded ^{9/} and could create a distinct competitive advantage for companies that have been sitting on the sidelines waiting for others to figure out the most effective strategies for reducing GHG emissions.

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^{9/} See RGGI, *Summary of the Draft Model Rule*, at 3 (Mar. 23, 2006), available at http://www.rggi.org/docs/summary_of_public_review_draft_mr.pdf (stating that set-aside accounts could include set asides for “early action”).