

SEPTEMBER 18, 2024



IN-PERSON AUDIT PERIOD 1 REPORT

ADDENDUM - REDACTED

IN-PERSON AUDITS OF PARTICIPATING RETAILER LOCATIONS

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Introduction

Philip Morris USA (“PM USA”), R.J. Reynolds Tobacco Company (“RJRT”), and ITG Brands (“ITG”) (collectively, the “Manufacturers”) retained FTI Consulting (“FTI”) as the independent Auditor pursuant to the Consent Order (the “Order”) entered in the case of the United States v. Phillip Morris et al. (99-CV-2496).¹ As the independent Auditor, FTI is responsible for assessing Participating Retailer Locations’ compliance with the placement of Court-ordered Corrective-Statement Signs by conducting In-Person Audits, reviewing data submitted to the Photo Database, deploying and maintaining the Tip Line, monitoring audit results, and providing reports to the Working Group, per Section I.D. of the Order.

As noted in the Attestation section of the In-Person Audit Period 1 Report, should additional information become available after the issuance of the report the auditor reserves the right to modify or supplement the report. As manufacturers have provided revised sales volume data, the auditor has recalculated the Representative Sample Noncompliance Rate as outlined below.

Source Data and Data Validation Procedures

Source Data Revisions

On June 24, 2024, the Manufacturers informed FTI that the sales volume data provided in the Audit Period 1 store listing received on October 7, 2023 was incorrect. The Manufacturers provided revised sales volume data on July 11, 2024, which was subsequently updated on July 12, 2024 and August 12, 2024. These revised figures were used to calculate the updated Representative Sample Noncompliance Rate. The sales volume data revisions impacted 13,591 or 6.2% of the Participating Retailer Locations in the original October 7, 2023 store listing and 8.4% of the stores included in Audit Period 1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ Order# 129 Remand - Fourth Superseding Consent Order Implementing The Corrective-Statements Remedy At Point Of Sale; Civil Action No. 99-CV-2496

Table 1. Revised Sales Volume Impacts Across the Store Listing

Population Affected	Stores with Unchanged Sales Volume	Stores with Revised Sales Volume	Total	Percent Revised
Not in Audit Period 1	195,123	12,735	207,858	6.13%
Audit Period 1	9,320	856	10,176 ³	8.41%
Total	204,443	13,591	218,034	6.23%

Additionally, on June 13, 2024, the Manufacturers informed FTI that the previous store listings, including the final Audit Period 1 store listing, contained duplicate records for distinct Participating Retailer Locations. On July 24, 2024, a final list of the duplicate records was provided by the Manufacturers.⁴ These listings included 126 Participating Retailer Locations associated with a consolidation with at least one location in the final In-Person Audit Period 1 population.

As part of the duplicate consolidations, the Manufacturers provided additional revised sales volumes or confirmed the existing volumes on August 12, 2024 for 7⁵ consolidations associated with 14 Participating Retailer Locations.⁶ Where updated sales volume data existed only for the TD Linx # being removed as part of the consolidation, this sales volume was assumed to be the correct value for the corresponding TD Linx # surviving the consolidation.

The number and composition of the Participating Retailer Locations in the store listing as well as the store sales volume data impacts the Representative Sample selection and replacement methodology processes. As these updates were not discovered until after the issuance of the Audit Period 1 Report, they were not considered when drawing the initial sample or selecting replacements.

Participating Retailer Location Replacements and Revisions

During the appeals process for Audit Period 2, incorrect store visits conducted during Audit Period 1 were identified. As a result, the following adjustments were made to the Participating Retailer Locations for Audit

³ The 10,176 Participating Retailer Locations includes the 306 stores that were replaced in the population; 9,870 Participating Retailer Locations were included in the final Audit Period 1 In-Person Audit population as a result. When the initial In-Person Audit Period 1 Report was issued FTI indicated 301 stores were replaced and 9,875 stores were subject to In-Person Audits. The change of five stores is a result of the removal of eight retailers (TD Linx #s 0646094, fti2937, fti3034, fti2684, fti2795, fti3000, fti3324, and fti3500) and addition of three retailers (TD Linx #s fti2938, fti3035, and fti2685) which are further discussed in the *Participating Retailer Location Replacements and Revisions* section below.

⁴ Multiple iterations of the duplicate records list were delivered between June 13, 2024 and July 24, 2024 with discussions related to additional duplicates and which records to remove or retain during this timeframe. A final set of stores that were initially identified as duplicates were determined to be unique stores by the Manufacturers on August 15, 2024. Further, on August 20, 2024, the Manufacturers sent a list of stores requiring new TD Linx # identifiers. This listing resulted in additional revisions to the duplicate listing, but there was no impact to the Audit Period 1 composition as a result of this list.

⁵ The seven consolidations referenced include TD Linx # 1830378 and TD Linx # 0067980 which were initially flagged as duplicates by the Manufacturers but were later confirmed to be distinct stores. Both had revised sales volumes on the list provided by the Manufacturers on August 12, 2024.

⁶ FTI prioritized updating data related to Participating Retailer Locations with revised sales volume data that impacted the Representative Sample Noncompliance Rate per the Working Group's guidance. Additional stores were identified that may have incorrect sales volume data due to consolidations; however, the Working Group decided not to perform additional analysis and updates to these records as they did not impact the Representative Sample Noncompliance Rate.

Period 1.⁷

- TD Linx # fti3180 was initially found to be Major Noncompliant during Audit Period 1. However, during the appeals process for Audit Period 2, it was discovered that the incorrect store had been audited in Audit Period 1. The store that was audited was TD Linx # 1513413. The Major Noncompliant outcome was moved to TD Linx # 1513413 with TD Linx # fti3180 effectively removed from the population.
- TD Linx # fti3499 was initially found to be Major Noncompliant during Audit Period 1 and TD Linx # fti3500 was initially found to be Compliant during Audit Period 1. However, during the appeals process for Audit Period 2, it was discovered that the audits had been swapped in Audit Period 1. The Compliant outcome was moved to TD Linx # fti3499 and the Major Noncompliant outcome was moved to TD Linx # fti3500 for Audit Period 1.
- TD Linx # 0646094 was initially found to be Major Noncompliant during Audit Period 1. However, during the appeals process for Audit Period 2, it was discovered that the incorrect store had been audited in both Audit Periods 1 and 2 as the store name and address data were incorrect in the store listings. As a result, the Major Noncompliant finding during Audit Period 1 was retracted, and the store was marked as a replacement in the Audit Period 1 population to remove it from the population.

As part of the duplicate consolidation effort discussed in the *Source Data and Data Validation Procedures* section above, several stores had to be removed or replaced for Audit Period 1.⁸

- **TD Linx # fti2937 and TD Linx # fti2938:** Both stores were in the Audit Period 1 population. TD Linx # fti2938 had been replaced on January 2, 2024 as the store location could not be identified due to poor address data, and TD Linx # fti2937 was found to be Compliant. TD Linx # fti2938 was determined to be the surviving store in the consolidation, so the Compliant outcome was moved to TD Linx # fti2938 and the replacement outcome was moved to TD Linx # fti2937.
- **TD Linx # fti3034 and TD Linx # fti3035:** Both stores were in the Audit Period 1 population. TD Linx # fti3035 had been replaced on January 2, 2024 as the store location could not be identified due to poor address data, and TD Linx # fti3034 was found to be Minor Noncompliant. TD Linx # fti3035 was determined to be the surviving store in the consolidation, so the Minor Noncompliant outcome was moved to TD Linx # fti3035 and the replacement outcome was moved to TD Linx # fti3034.
- **TD Linx # fti2684 and TD Linx # fti2685:** Both stores were in the Audit Period 1 population. TD Linx # fti2685 had been replaced on December 27, 2023 as the store location could not be identified due to poor address data, and TD Linx # fti2684 was found to be Compliant. TD Linx # fti2685 was determined to be the surviving store in the consolidation, so the Compliant outcome was moved to TD Linx # fti2685 and the replacement outcome was moved to TD Linx # fti2684.
- **TD Linx # fti2794 and TD Linx # fti2795:** Both stores were in the Audit Period 1 population and were found to be Compliant. TD Linx # fti2794 was determined to be the surviving store in the consolidation, so TD Linx # fti2795 was marked as a replacement in the Audit Period 1 population to remove it from the population.
- **TD Linx # fti2999 and TD Linx # fti3000:** Both stores were in the Audit Period 1 population and were found to be Compliant. TD Linx # fti2999 was determined to be the surviving store in the consolidation,

⁷ The adjustments for TD Linx # fti3180, 1513413, fti3499, and fti3500 were approved by the Working Group on April 29, 2024. The adjustment for TD Linx # 0646094 was approved by the Working Group on June 5, 2024.

⁸ Additional consolidations not listed in this report affected stores in the Audit Period 1 population, but they did not require any replacements or removals and, therefore, did not impact the composition of the Audit Period 1 population.

so TD Linx # fti3000 was marked as a replacement in the Audit Period 1 population to remove it from the population.

- **TD Linx # fti3323, TD Linx # fti3324, and TD Linx # fti3325:** All three were in the Audit 1 population. TD Linx # fti3323 was found to be Minor Noncompliant, TD Linx # fti3324 was found to be Compliant, and TD Linx # fti3325 had been replaced on December 27, 2023 as the store location could not be identified due to poor address data. TD Linx # fti3323 was determined to be the surviving store in the consolidation, so TD Linx # fti3324 was marked as a replacement in the Audit Period 1 population to remove it from the population. No change was needed for TD Linx # fti3325.
- **TD Linx # fti2677 and TD Linx # fti3500:** Both stores were in the Audit Period 1 population and were found to be Major Noncompliant.⁹ TD Linx # fti2677 was determined to be the surviving store in the consolidation, so TD Linx # fti3500 was marked as a replacement in the Audit Period 1 population to remove it from the population. Additionally, TD Linx # fti3500 was in both the Suspected Noncompliance Population and the Representative Sample Population while TD Linx # fti2677 was only in the Suspected Noncompliance Pool Population. To maintain the 6,000 store Representative Sample Population size, TD Linx # fti2677 was updated to be in both populations while TD Linx # fti3500 was updated to be in only the Suspected Noncompliance Pool.

Other than the consolidation of TD Linx # fti2677 and TD Linx # fti3500, all the Participating Retailer Locations above were selected from the Suspected Noncompliance Pool for Audit Period 1, and the adjustments did not change this population designation. Therefore, none of these changes impacted the Representative Sample Noncompliance Rate for Audit Period 1.

As a result of the duplicate consolidations discussed in the *Source Data and Data Validation Procedures* section 21 TD Linx #s have changed between the original and current Exhibit 3. The changes to the TD Linx # did not impact the Representative Sample Noncompliance Rate¹⁰ or the Final Determination of Compliance for these stores.

Table 2. Participating Retailer Location TD Linx # Changes

TD Linx # - Original Audit Period 1 Report	TD Linx # - Audit Period 1 Report Addendum
fti2618	fti2617
fti2643	fti2642
fti2661	fti2660
fti2702	fti2703
fti2764	fti2763
fti2845	fti2844

⁹ TD Linx # fti3500 had initially been found as Compliant. However, due to the audit swap discussed in the above paragraph, the finding was updated to Major Noncompliant which was the status at the time the duplicate consolidations were executed.

¹⁰ For one consolidation (TD Linx # fti3171 and fti3172) the stores had different sales volumes. However, as the stores are associated with selections from the Suspected Noncompliance Pool they have no impact on the Representative Sample Noncompliance Rate. The sales volume used in the original In-Person Audit Period 1 Report is the value used in the In-Person Audit Period 1 Report Addendum.

TD Linx # - Original Audit Period 1 Report	TD Linx # - Audit Period 1 Report Addendum
fti2859	fti2858
fti2870	fti2871
fti2935	fti2936
fti2973	fti2972
fti3013	fti3012
fti3119	fti3118
fti3171	fti3172
fti3287	fti3286
fti3312	fti3311
fti3316	fti3315
fti3356	fti3355
fti3364	fti3363
fti3378	fti3377
fti3387	fti3388
fti3442	fti3441

Result of In-Person Audits

Representative Sample Noncompliance Rate Input Observations

The revised sales volume list and the consolidations due to duplicate records affected the sales volume for 390 of the 6,000 Representative Sample stores in the In-Person Audit population.

Table 3. Summary of Revised Sales Volume Impacts to the Representative Sample Population

Final Determination of Compliance	Store Count	Total Original Sales Volume	Total Revised Sales Volume	Percent Change
Stores not Audited ¹¹	208,164			-41.71%
Stores Audited (Suspected Noncompliance Pool):				
- Compliant	2,788			-46.40%
- Major Noncompliant	697			-57.51%
- Minor Noncompliant	385			-33.01%
Subtotal SNP:	3,870			-47.51%
Stores Audited (Representative Sample):				
- Compliant	4,772			-51.50%
- Major Noncompliant	948			-20.73%
- Minor Noncompliant	280			-4.30%
Subtotal Representative Sample:	6,000			-46.61%

¹¹ The Store Count differs from the Table 1 Total (207,858 stores) as the 306 replaced stores are included in the Store Count in Table 3.

FTI cannot make a representation as to the accuracy of the sales volume data. FTI assumes the data provided by the Manufacturers is correct and has incorporated the values into the Representative Sample Noncompliance Rate calculation accordingly.

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

Representative Sample Noncompliance Rate Calculation

FTI calculated the Representative Sample Noncompliance Rate in accordance with the formula defined in Section I.PP. of the Order utilizing both the original and revised sales volumes. Using the sales volume data provided in the original October 7, 2023 store listing, FTI calculated an initial Representative Sample Noncompliance Rate of 11.02% for Audit Period 1. Utilizing the same formula with the revised sales volume data provided on July 12, 2024 and August 12, 2024, FTI calculated a final Representative Sample Noncompliance Rate of 16.36% for Audit Period 1. This 5.34% increase was driven by a 20.7% overall decrease in the total sales volume of the Major Noncompliant stores in the Representative Sample Population compared to a 46.6% overall decrease in the total sales volume of all stores in the Representative Sample Population.

The decrease in the overall sales volume was largely driven by a decrease in sales volume for the Duty Free stores; the top five stores with the largest volume changes were all Duty Free stores. These five stores, making

[REDACTED]

up 0.1% of the Compliant stores in the Representative Sample Population, contributed to 66.3% of the decrease in the total sales volume for the Compliant stores.¹³

Please refer to the In-Person Audit Period 1 Report for details on the calculation process and exclusions. The values for the variables used to calculate the Representative Sample Noncompliance Rate are cited in the table below.

Table 4. Summary of Representative Sample Noncompliance Rate Calculation

Sales Volume Data	Retailer_NC _i X Retailer_sales _i	Retailer_sales _i	Representative Sample Noncompliance Rate
Original			11.02%
Revised (Final Data)			16.36%

The detailed schedule of the Participating Retailer Locations included or excluded in the Representative Sample Noncompliance Rate is in *Exhibit 3. Revised Schedule of Representative Sample Noncompliance Rate Classifications* to the In-Person Audit Period 1 Report – Addendum.

Representative Sample Noncompliance Rate Implication

Pursuant to Section VI.4. of the Order, should the Representative Sample Noncompliance Rate exceed 15% in any of the first through third Audit Periods, the Manufacturers are obligated to pay the U.S. Treasury a civil penalty. As detailed above, FTI calculated the Representative Sample Noncompliance Rate using the revised sales volume data to be greater than 15% for Audit Period 1 and, therefore, concluded that the Manufacturers are subject to the civil penalty discussed in Section VI.4. of the Order as a result of this audit period.

Attestation

I, Michelle Herman, hereby state that to the best of my knowledge, information, and belief as project director, FTI conducted the In-Person Audits in accordance with the Order and accurately reported the audit results.

My findings are based upon information available to me as of the date of this report. Should additional information become available, I reserve the right to modify or supplement my analysis.



Michelle Herman

Senior Managing Director, FTI Consulting, Inc.

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