

IN-PERSON AUDIT PERIOD 1 REPORT - CONFIDENTIAL

IN-PERSON AUDITS OF PARTICIPATING RETAILER LOCATIONS

—Table of Contents

Introduction	2
Source Data and Data Validation Procedures	2
Representative Sample Pool	3
Suspected Noncompliance Pool	4
Participating Retailer Location Replacements	7
Final Participating Retailer Location Population	8
Facilitation and Execution of In-Person Audits	9
In-Person Noncompliance Notice Appeals	16
Tip Line Configuration and Results	18
Result of In-Person Audits	19
Attestation	21
Appendix A. Documents Reviewed and Relied Upon	22
Appendix B. Additional Assumptions, Considerations, and Critical Decisions	23
Appendix C. Fields Provided to Plaintiffs for Selection of Suspected Noncompliance Pool	26
Appendix D. In-Person Audit Letter of Announcement	27
Appendix E. Consent Order and Report Definitions	28
Consent Order Definitions	28
Report Definitions	32

Introduction^{1,2}

Responsibility of the Auditor

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)³. 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.

In-Person Audits Overview

In the first Audit Period (October 8, 2023 through February 17, 2024), FTI completed In-Person Audits and compliance assessments of 9,875 Participating Retailer Locations drawn from the Representative Sample Pool and Suspected Noncompliance Pool. The In-Person Audits consisted of collecting data and taking photographs required for making and documenting compliance determinations as defined in Section I.L. of the Order. In-Person Audit data was uploaded to FTI's audit submission platform, the POS Signage Compliance Portal (the "Portal"), and subsequently transferred to the Master Photo Database (the "MPD") hosted in Relativity for a multi-level photo analysis conducted by FTI's Photo Review Team. For Participating Retailer Locations found to be in noncompliance with the requirements of the Order, FTI sent an In-Person Noncompliance Notice detailing the basis for the findings of Major or Minor Noncompliance.

Source Data and Data Validation Procedures

Source Data Overview

To facilitate the In-Person Audits conducted during Audit Period 1, the Manufacturers provided several datasets, including the combined listing of Participating Retailer Locations ("store listing") required by Section V.3. of the Order. On October 7, 2023 the Manufacturers provided FTI with the store listing, consisting of 218,034 Participating Retailer Locations, from which the Audit Period 1 Representative Sample was selected.

The Manufacturers also provided a listing of Participating Retailer Locations on military installations⁵ and a separate listing of Participating Retailer Locations on military installations that were shipped the required Corrective-Statement Signs⁶ because the Manufacturers' representatives were unable to visit these locations. FTI used these listings to research access requirements and conduct applicable outreach to determine necessary steps in advance of the In-Person Audit. See *Appendix A. Documents Reviewed and Relied Upon* for additional key information sources.

¹ Terms discussed throughout the report are defined in *Appendix E. Consent Order and Report Definitions*.

² In tables throughout the report, some of the totals are 99.99% instead of 100.00% due to the rounding of values to two decimals. For illustrative purposes, FTI rounded these totals to 100.00%.

³ Order# 129 - Remand Fourth Superseding Consent Order Implementing The Corrective-Statements Remedy At Point Of Sale; Civil Action No. 99-CV-2496

⁴ "2023.10.07 Audit Period 1 Store List - PM, AG, RJRT, ITG-CONFIDENTIAL SUBJECT TO P.O. IN US V PM, ET AL, 99CV2496.xlsx"

⁵ "List of Military Stores (Public Version).xlsx"

⁶ "2023.10.13 List of Military Stores Shipped POS (Public Version).xlsx"

Data Validation

FTI performed a data validation exercise on the store listing provided by the Manufacturers and reported the following data discrepancies on October 8, 2023.

- FTI identified 402 duplicate TD Linx #s (896 total records). To track these stores through the audit process, FTI assigned unique identifiers to the duplicated records. This approach was agreed upon on October 13, 2023.
- In the population of duplicate Participating Retailer Locations, FTI also identified seven TD Linx #s (14 total records) that had different Spanish Qualified Census Tract Indicator values for records sharing the same TD Linx #. FTI assigned unique seven-digit "FTI IDs" for these Participating Retailer Locations and assessed compliance according to the provided values. This approach was agreed upon on October 13, 2023. Four stores from this population were audited in Audit Period 1.
- There were 146 Census Tracts that contained Participating Retailer Locations with different Spanish
 Qualified Census Tract indicator values. It was expected that all Participating Retailer Locations in each
 Census Tract would have the same Spanish language indicator value. FTI used the provided Spanish
 Qualified Census Tract indicator values for the 70 Participating Retailer Locations that were audited in
 Audit Period 1.
- There were four unique TD Linx #s that did not have a Spanish Qualified Census Tract indicator value.⁷ Where possible, FTI set the Spanish Qualified Census Tract Indicator value to match the value from other Participating Retailer Locations within the same Census Tract. There were two Participating Retailer Locations that did not share a Census Tract with any other records, so FTI relied upon the Spanish Qualified Census Tract Indicator value from Participating Retailer Locations within the same zip code, which all had the same value. One Participating Retailer Location from this population was audited in Audit Period 1.
- In the store listing, there was one Participating Retailer Location that did not have a state value: TD Linx # DF00136 ("DFA Miami #719/DFA Miami #719(MIA)"). To conduct the Representative Sample selection, FTI assumed and assigned the city and state as "Miami" and "FL," respectively, based on independent research.

Representative Sample Pool

Overview

The Representative Sample consists of 6,000 Participating Retailer Locations selected according to the methodology outlined in Section I.OO. of the Order. The Representative Sample selection methodology required a mapping of each Participating Retailer Location to one of the five defined strata, which are based on the United States Census Regions or presence in a United States Territory. The Census Regions – Midwest, Northeast, South, and West – are the first four strata, with all stores located in a United States Territory forming the fifth strata.⁸

For the Representative Sample selection input population, FTI did not exclude any Participating Retailer Locations from the store listing provided by the Manufacturers. On October 11, 2023, FTI communicated to the

⁷ The four TD Linx #s are based on the data provided by the Manufacturers in the store listing. The four TD Linx #s were duplicates and represented six stores in the store listing.

⁸ See https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf for state-Census Region mapping.

Working Group that should a Participating Retailer Location be selected and determined to be closed, the store would be replaced based on the criteria cited in Section V.6.c. of the Order.

Sampling Methodology and Selection

The Audit Period 1 Representative Sample was selected on October 11, 2023. FTI first sorted the dataset of Participating Retailer Locations by the five strata, and then sorted the dataset by the volume of Covered Brands of cigarettes shipped to the Participating Retailer Locations in the previous 12 months⁹ from most to least within each of these five strata. Each Participating Retailer Location was assigned a position number according to the sort order. FTI calculated the following variables as described in the Order and executed the Representative Sample selection in accordance with these calculations:

Table 1. Representative Sample Calculation Variables

Variable	Value ¹⁰
# of Stores in Representative Sample Pool	6,000
# of Seeded Sets	19
N' (i.e., Total Number of Participating Retailer Locations)	218,034
SI (i.e., Sampling Interval)	690 = (19 x N') / 6,000
I	315 = (6,000/19) - 1

A Census Region summary of the Representative Sample is as follows:

Table 2. Representative Sample Pool Strata Distribution

Strata	Census Region Name	Number of Selected Retailers	Percent of Selected Sample
Strata 1	Midwest	1,412	23.53%
Strata 2	Northeast	725	12.08%
Strata 3	South	2,880	48.00%
Strata 4	West	983	16.38%
Strata 5	Territory	-	0.00%
Total		6,000	100.00%

Suspected Noncompliance Pool

Overview

Section I.XX. of the Order defines the "Suspected Noncompliance Pool" ("SNP") as "an audit pool consisting of Participating Retailer Locations (a) for which no photo showing compliance has been submitted (to be included in this pool in only the first Audit Period and third Audit Period), (b) that have been flagged as suspected of noncompliance by the Tip Line and not previously been audited based on the Tip Line communication that triggered its inclusion in the Suspected Noncompliance Pool, or (c) that were found in Major Noncompliance via In-Person audit in the immediately prior Audit Period."

⁹ The Manufacturers provided the shipping volume for Covered Brands of cigarettes in the combined listing of Participating Retailer Locations.

¹⁰ Values have been rounded to the nearest whole number.

Per Section V.6.b. of the Order, up to 4,000 Participating Retailer Locations from the Suspected Noncompliance pool may be audited in an Audit Period; should the Suspected Noncompliance Pool exceed 4,000, the Plaintiffs would select the Participating Retailer Locations subject to an In-Person Audit. With the extension of the Posting Period into December, the Plaintiffs agreed to select the 4,000 stores for Audit Period 1 in two waves to prevent further delays in finalizing the In-Person Audit population.

FTI excluded confidential information (*i.e.*, sales volume) from the listing prior to distributing to the Plaintiffs for selection. The columns in the listing (see *Appendix C. Fields Provided to Plaintiffs for Selection of Suspected Noncompliance Pool*), were approved by the Working Group ahead of selection. For the first selection wave, FTI provided the number of Participating Retailer Locations with outstanding compliance determinations, so the Plaintiffs were aware of the population of potential Suspected Noncompliance Pool additions.

Suspected Noncompliance Pool Composition

The final Audit Period 1 Suspected Noncompliance Pool consisted of 8,038 Participating Retailer Locations. The pool was composed of the following categories:

SNP Category	Number of Retailers
Noncompliant Stores with No Resubmissions	4,140
Stores with No Posting Period Submission	1,196
Photo Insufficient Stores with No Resubmissions	1,158
Noncompliant Stores After Resubmission	1,000
Stores with Only Invalid Posting Period Submissions	537
Tip Line Submissions ¹¹	7
Total	8,038

There were several categories of Participating Retailer Locations that were excluded from the Suspected Noncompliance Pool, including those subject to Section IV.4. of the Order, which indicates the Manufacturers shall deliver Corrective-Statement Signs to Participating Retailer Locations not visited by a Manufacturer's representative during the Posting Period; these Participating Retailer Locations are not required to submit photographs to the MPD. Additional exclusions were applied in accordance with Working Group decisions. The Participating Retailer Locations excluded from the Suspected Noncompliance Pool were the following:

- 61 Military Locations that did not have Posting Period submissions and were not visited by the Manufacturers' representatives.
- 43 Duty-Free Locations that did not have Posting Period submissions and are not regularly visited by the Manufacturers' representatives.
- Six non-Duty-Free Locations that did not have Posting Period submissions and are not regularly visited by the Manufacturers' representatives.
- 816 temporarily closed Locations where photos were not submitted or no resubmission was received.

¹¹ One Participating Retailer Location was a Noncompliant store from the Posting Period and was the subject of a Tip Line submission. This store was included in the Tip Line Submissions category to avoid double counting.

Suspected Noncompliance Pool Selection

The initial Suspected Noncompliance Pool was created and circulated to the Working Group on November 16, 2023. On November 29, 2023, Plaintiffs selected stores from the initial pool (6,136 retailers) plus six Tip Line stores for In-Person Audits. An addendum to the Suspected Noncompliance Pool was created on December 15, 2023 consisting of 1,896 stores; this included the Participating Retailer Locations that had compliance determinations made after the initial Suspected Noncompliance Pool was created. Plaintiffs selected the remaining stores on December 20, 2023 from locations not selected from the initial listing plus the stores on the addendum for a total of 5,038 Participating Retailer Locations.

The Plaintiffs selected 3,000 Participating Retailer Locations from the initial pool and the remaining 1,000 were selected from the second pool.

Table 4. Suspected Noncompliance Pool Summary by Selection Wave

	Wave One Retailers		Wave Two Retailers	
SNP Category	Total	Selected	Total	Selected
Noncompliant Stores with No Resubmissions	2,900	1,211	2,929	531
Stores with No Posting Period Submission	1,196	820	376	152
Noncompliant Stores After Resubmission	756	497	503	168
Photo Insufficient Stores with No Resubmissions	747	270	888	105
Stores with Only Invalid Posting Period Submissions	537	196	341	43
Tip Line Submissions	6	6	1	1
Total	6,142	3,000	5,038	1,000

Accounting for replacements¹², the final 4,000 Participating Retailer Locations that were audited as part of the Suspected Noncompliance Pool were composed of the following:

Table 5. Final Selected Suspected Noncompliance Pool Summary

SNP Category	Number of Retailers	Percent of Final SNP
Noncompliant Stores with No Resubmissions	1,822	45.55%
Stores with No Posting Period Submission	880	22.00%
Noncompliant Stores After Resubmission	670	16.75%
Photo Insufficient Stores with No Resubmissions	406	10.15%
Stores with Only Invalid Posting Period Submissions	215	5.38%
Tip Line Submissions	7	0.18%
Total	4,000	100.00%

¹² The replacement of initial selections is described in the *Participating Retailer Location Replacements* section of this report.

Participating Retailer Location Replacements

Overview of Replacement Methodology

FTI replaced 301 Participating Retailer Locations initially selected as part of the In-Person Audit population. The replacement logic differed depending on the pool from which the Participating Retailer Location was selected:

- 1. For each Participating Retailer Location selected from the Representative Sample Pool which required replacement, FTI identified a different Participating Retailer Location from the population that was present in the same United States Census Region or Territory and shipped a similar volume of Covered Brands of cigarettes in the last 12 months per Section V.6.c of the Order. FTI quantified "a similar volume" as shipping volumes with the lowest absolute difference between the volume of the store to be replaced and that associated with the replacement Participating Retailer Location.
- 2. For each Participating Retailer Location selected from the Suspected Noncompliance Pool which required replacement, FTI randomly selected a replacement from a pool of 300 alternate retailers approved by the Plaintiffs on January 5, 2024.
 - a. The alternates were selected at random from the Suspected Noncompliance Pool. 13
 - b. 100 alternates were drawn from the Suspected Noncompliance Pool addendum on December 20, 2023.
 - c. Due to the volume of replacements during the In-Person Audits, FTI proposed selecting an additional 200 alternates on January 4, 2024. The Plaintiffs agreed to this approach and FTI randomly selected the additional alternates.
- 3. For Participating Retailer Locations which required replacement and were selected as part of both the Representative Sample and Suspected Noncompliance Pools, FTI selected two replacement Participating Retailer Locations one according to the Representative Sample replacement methodology and the other according to the Suspected Noncompliance Pool replacement methodology. There were five Participating Retailer Locations selected into both pools that were replaced.

Replacement Population

Participating Retailer Locations required replacement based on circumstances preventing FTI from conducting an In-Person Audit. A summary of the replacement reasons, ordered by prevalence, is as follows:

- 1. The Participating Retailer Location was confirmed to be permanently closed or temporarily closed for an extended period, accounting for 160 or 53% of 301 total replacements. Of these stores, 12 or 8% of the 160 were flagged as temporarily closed by the Manufacturers ¹⁴. Extended Participating Retailer closures were due to a variety of circumstances, including but not limited to renovations, construction, and stores that appeared to no longer be operational.
- 2. The Participating Retailer Location did not sell Covered Brands (*i.e.*, not a Participating Retailer Location) accounting for 98 or 33% of replacements.
- 3. For 27 or 9% of the replacements, FTI was unable to determine the location of the Participating Retailer Location due to issues with address data quality from the store listing, and the location could not be validated through independent research (e.g., attempting to identify a phone number for the store and

¹³ The Participating Retailers not selected from the Suspected Noncompliance Pool were assigned a unique number. A Python program was run to select random numbers from the list of unique assigned numbers. The Participating Retailer Locations associated with the selected random numbers were the resulting alternates.

¹⁴ "2023.10.13 Temp Closed Store List (Public Version).xlsx"

conduct advance outreach). For example, FTI identified Participating Retailer Locations that appeared to be duplicates of one another within the Audit Period 1 Population. ¹⁵ Only Participating Retailer Locations from the Suspected Noncompliance Pool required replacement due to a duplicative address issue. ¹⁶

- 4. The Participating Retailer Location was in a restricted area that FTI was unable to access to complete the In-Person Audit, accounting for nine or 3% of replacements. This included military installations for which access requirements could not be determined despite multiple attempts contacting the installation ¹⁷ and three stores located at a restricted NASA center.
- 5. The Working Group advised FTI to replace five Participating Retailer Locations based on information gleaned during the appeals process.
- 6. Upon arriving at two Participating Retailer Locations, the In-Person Auditor determined it was not safe to conduct the audit based on their on-site observations.

Stores selected from the Suspected Noncompliance Pool accounted for 204 or 68% of the 301 replaced Participating Retailer Locations. A list of replaced Participating Retailer Locations and reasons can be found in *Exhibit 1. Schedule of Participating Retailer Location Replacements*.

Final Participating Retailer Location Population

Overview of Population

Following replacements, the final population of Participating Retailer Locations subject to an In-Person Audit during Audit Period 1 consisted of 5,875 Participating Retailer Locations from the Representative Sample Pool, 3,875 Participating Retailer Locations from the Suspected Noncompliance Pool, and 125 Participating Retailer Locations from both pools. A total of 9,875 Participating Retailer Locations were visited and assigned a Final Determination.

Scope of In-Person Audits

The final audit population was split across the three Census Tract designations: Not in a Qualifying Census Tract, Qualifying Census Tract, and Puerto Rico. The final Census Tract designation is subject to the data assumptions noted in the *Source Data and Data Validation Procedures* section.

Table 6. Final Audit Population by Census Tract Designation

Designation	Number of Retailers	Percent of Final Population
Not in a Qualifying Census Tract	8,643	87.52%
Qualifying Census Tract	1,230	12.46%
Puerto Rico	2	0.02%
Total	9,875	100.00%

¹⁵ Duplicates were located at the same address, but two distinct stores were not present at that location. Most duplicates had the same shipping volumes and shared the same contract numbers for one or more of the Manufacturers.

¹⁶ On December 21, 2023, FTI informed the Working Group of these observations and proposed an approach to replace one of the duplicates. The Working Group agreed these Participating Retailer Locations should be replaced.

¹⁷ On November 20, 2023, FTI informed the Working Group of difficulties accessing two Participating Retailer Locations on military installations. The Working Group subsequently agreed that these Participating Retailer Locations should be replaced. On December 22, 2023, FTI informed the Working Group of difficulties accessing additional military installations, and the Working Group again agreed that these Participating Retailer Locations should be replaced.

The audit population was distributed across the United States with audits conducted in all 50 states, the District of Columbia, and Puerto Rico. The majority of the In-Person Audits occurred in the South (Strata 3), accounting for 48% of the audit population. The smallest region was Strata 5, comprised of only two Participating Retailer Locations in Puerto Rico.

Table 7. Final Audit Population Strata Summary

Strata	Census Region Name	Number of Retailers	Percent of Final Population
Strata 1	Midwest	2,326	23.55%
Strata 2	Northeast	1,199	12.14%
Strata 3	South	4,727	47.87%
Strata 4	West	1,621	16.42%
Strata 5	Territory	2	0.02%
Total		9,875	100.00%

The final In-Person Audit population generally followed the overall store listing distribution across states. The top five states (containing the highest number of Participating Retailer Locations) in the audit population accounted for 34% of all Participating Retailer Locations in the store listing. The bottom five states/territories (containing the fewest number of Participating Retailer Locations) were also consistent with the store listing distribution. Two of the bottom locations were Saipan and Guam, neither of which were selected in the final Audit Period 1 population.

Table 8. Final Audit Population Top Five and Bottom Five States/Territories

State/Territory	Number of Retailers	Percent of Final Population	Percent of Store Listing
Texas	978	9.90%	9.95%
California	779	7.89%	7.30%
Florida	623	6.31%	6.15%
North Carolina	467	4.73%	4.47%
Ohio	461	4.67%	4.44%
Alaska	11	0.11%	0.14%
District of Columbia	5	0.05%	0.06%
Puerto Rico	2	0.02%	0.01%
Guam	0	0.00%	0.00%
Saipan	0	0.00%	0.00%

Facilitation and Execution of In-Person Audits

In-Person Audit Process Overview

The end-to-end In-Person Audit process consisted of the (i) on-site visit to the selected Participating Retailer Location where the Auditor collected critical compliance data and photographs, (ii) submission of audit data to the Portal, (iii) transfer of data to the MPD, (iv) compliance assessments by FTI's Photo Review Team within the MPD, and (v) issuing of compliance decisions, including distribution of In-Person Noncompliance Notices (if applicable).

Figure 1. End-to-End Audit Process Summary



In-Person Audit Location Validation

Due to data quality issues with the Participating Retailer Location names and addresses in the provided store listing, FTI independently validated the store address and name data for selected Participating Retailer Locations prior to the on-site visits. FTI developed a program, using a Google Maps Platform API¹⁸ to ingest the provided store address and retrieve Google Maps search results (including name and address) for these inputs. FTI then programmatically identified differences between the provided store name and address relative to the API results and conducted the following validation procedures:

- Calculated the distance between the provided store address and the API result
- Compared the store listing name to the API result
- Executed quality control checks on the API results (e.g., verified the API result was in the same city and state as that provided in the store listing)
- Searched the reconciled address across the entire store listing to verify the API result was not associated with another Participating Retailer Location

As a result of the validation steps, FTI developed additional location notes where applicable (*e.g.*, highlighting fuel centers versus grocery stores with the same address, citing cross-streets at intersections for imprecise addresses).¹⁹

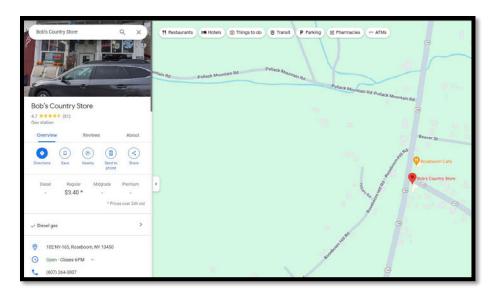
<u>Store address data quality issue example</u>: TD Linx # 1825202 (Bob's Country Store) had a listed address of RT 10, Roseboom, NY 13450. This address does not provide the physical location of the Participating Retailer location as RT 10 is too imprecise to be used to successfully navigate to the store. The following steps were used to identify a useful address for the store:

- Using the Google Maps Platform API, "Bob's Country Store" was searched at RT 10, Roseboom, NY 13450. The API was able to locate a "Bob's Country Store" at 102 NY-165, Roseboom, NY 13450.
- This new address was more than 10 miles away from the RT 10 address, so the store was flagged for additional review.
- As part of the additional review, the city and state were compared for the two addresses, and the store
 name was manually searched in the city to determine if there were other locations that could be a
 match. For this store, the new address had the same city (Roseboom) and state (NY), and there were no
 other "Bob's Country Stores" located in Roseboom.

¹⁸ API stands for Application Programming Interface. In this case, the API is a way to send and receive data with a Google address platform. Store information and search parameters are sent to Google, searched across their datasets, and results are returned via the API.

¹⁹ This supplemental location data was also provided to the Photo Review Team for them to confirm the correct location was visited as a component of the compliance assessment.

• The last step was to check the provided store listing to ensure the new address was not associated with a different Participating Retailer Location. This was the only store from the listing located in Roseboom, NY, so this new address was confirmed to not belong to a different Participating Retailer Location.



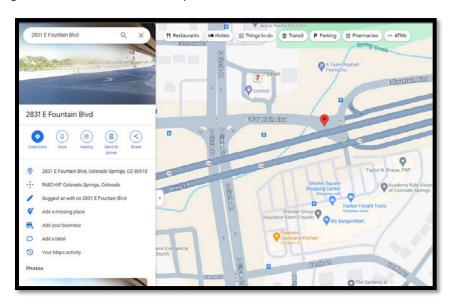
The final location for Bob's Country Store identified as the only Participating Retailer Location in Roseboom, NY.



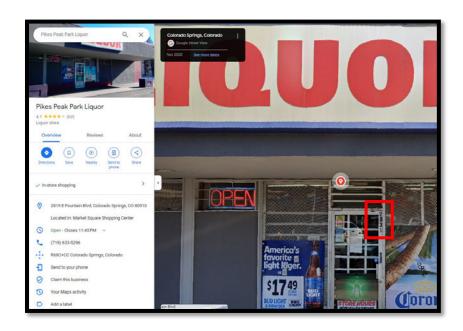
Searching of the listed address RT 10, Roseboom, NY 13450 provides imprecise results and is not where the store is located.

<u>Store name data quality issue example</u>: TD Linx # 1397545, had a store name of KAMP BEVERAGES LLC, and its address was at an intersection with multiple stores located nearby (2831 E Fountain Blvd, Colorado Springs, CO 80910-2312). The following steps were used to identify a useful name and address for the store:

- Using the Google Maps Platform API, "KAMP BEVERAGES LLC" was searched at 2831 E Fountain Blvd, Colorado Springs, CO 80910-2312. The API was not able to locate a store in Colorado Springs that matched the store name, so the store was flagged for additional review.
- Manual searching of "Kamp Beverages LLC" in Colorado Springs on Google Maps returned multiple different liquor stores which did not narrow the results.
- Using the provided store address, there were three stores nearby that were potential candidates: 7-Eleven, My BargainMart, and Pikes Peak Park Liquor.
 - 7-Eleven was determined to be a different store in the store listing (TD Linx # 3994762) and had an address of 2802 E Fountain Blvd.
 - My BargainMart was not a store in the listing but also did not appear to sell cigarettes based on interior store photos from Google Maps.
 - O Pikes Peak Park Liquor was not a store in the listing; however, it appeared as the most likely match. The store sold cigarettes based on interior photos from Google Maps, the "Beverages" part of the provided store name seemed consistent with a liquor store, and the store front photos had the numbers 2831 next to the door which matched the provided address. The address on Google was listed as 2819 E Fountain Blvd, Colorado Springs, CO 80910 which was used along with the Pikes Peak Park Liquor store name as the validated store location.



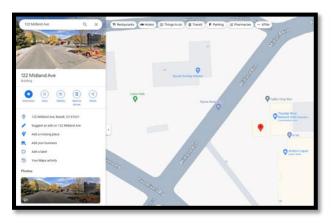
The listed address 2831 E Fountain Blvd, Colorado Springs, CO 80910-2312 is at an intersection with multiple potential locations nearby.

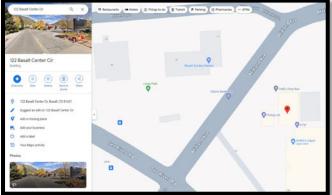


The Pikes Peak Park Liquor located at the intersection had a different address, but the "2831" numbers from the listed address appear on the door. No other Participating Retailer Location in the store listing was at this 2819 address.

<u>Store location duplicate example</u>: TD Linx # 1585043 had a listed name and address of Thunder River Market # 5 at 122 MIDLAND AVE, BASALT, CO 81621. TD Linx # 7458935 had a listed name and address of Co MGMT LLC at 122 Basalt Center Cir, Basalt, CO 81621, and the advertising name was Thunder River Market #5.

- For TD Linx # 1585043, using the Google Maps Platform API, "Thunder River Market # 5" was searched for at 122 MIDLAND AVE, BASALT, CO 81621. The API returned the store as Thunder River Market 5 at 122 Basalt Center Cir, Basalt, CO 81621. Since the listed street name differed from the API result, the store was flagged for additional review.
- Manual searching of 122 MIDLAND AVE, BASALT, CO 81621 and 122 Basalt Center Cir, Basalt, CO 81621
 resulted in one address that appeared near the gas station pumps and one for the nearby convenience
 store, but they pointed to the same audit location.
- The new address 122 Basalt Center Cir, Basalt, CO 81621, was searched against the entire store listing and returned TD Linx # 7458935 with the same address.
- As TD Linx # 7458935 had the advertising name of "Thunder River Market #5", which was the same as the store name for TD Linx # 1585043, it was determined to be the same store location.
- Both stores were in the audit population, so TD Linx # 7458935 was subsequently replaced due to the duplicate issue.





The two addresses provided pointed to the same location (122 Midland Ave on the left and 122 Basalt Center Cir on the right).

The store location validation process was performed to ensure that the In-Person Auditors could navigate to the correct location and the Photo Review Team could confirm that the correct store had been audited. To facilitate location confirmation by the Photo Review Team, In-Person Auditors were required to upload "Store Location Evidence" photographs to demonstrate they visited the correct location. Recommended "Store Location Evidence" photographs included screenshots of the In-Person Auditor's "Current Location" on their smartphones and pictures of the Participating Retailer Location exterior displaying the store name and street number (where available). The Photo Review Team then leveraged the same validated store location data to confirm the auditors visited the correct location.

Military Installation Outreach

To increase the likelihood of a successful audit attempt of selected Participating Retailer Locations on military installations, FTI conducted extensive research and attempted multiple forms of outreach to determine access requirements and procedures for each installation flagged by the Manufacturers. FTI also identified three selected Participating Retailer Locations that were on bases but were not flagged as located on military installations in the provided listing; the same research and outreach was conducted for these locations to determine access requirements. Information collected during this exercise was then provided to In-Person Auditors prior to their visit.

Table 9. Participating Retailer Location Military Installations Identified by FTI

TD Linx #	Retailer Name	Retailer Address	Access Status
1622836	BASE EXCHANGE	5401 E Lake Blvd Bldg 150, Birmingham,	Access Successful
		AL, 35217-3545	
fti3180	NEX 720 SAN DIEGO	2260 Callagan Hwy, San Diego, CA, 92136-	Access Successful
	MAIN	0001	
fti3330	CAMP PEND STUART	Stuart Mesa Bl 31000, Camp Pendleton,	Access Successful
	MESA #10332	CA, 92055	

²⁰ Typically, FTI collected and stored geolocation metadata from submitted Store Location Evidence photographs; however, this was not always feasible due to technological limitations, such as certain phone settings, models, or lack of service in remote areas.

There were several instances where FTI was unable to predetermine access requirements or obtain required sponsorship from an individual at the installation in advance; In-Person Auditors still attempted to access the base by presenting copies of the Letter of Announcement, the Order, and identification at the installation access point. ²¹ The majority of In-Person Auditors were successful with this approach, but for those that were not, the Participating Retailer Location on the installation was replaced in accordance with the methods described in the Participating Retailer Location Replacements section.

In-Person Auditors, regardless of whether FTI was able to establish installation contact in advance, were provided guidance about the installation, including acceptable forms of identification and details on the access points and/or location of the Visitor Control Center.

Route Optimization

The audit population was grouped into clusters based on their proximity to other selected Participating Retailer Locations. This clustering methodology was deployed to segment regions into smaller areas, regardless of city or state borders, improving audit efficiency and facilitating assignments of In-Person Auditors to these smaller areas. Auditors' lists of assigned locations were run through a routing platform (Route4Me) to calculate the optimal order in which the audits should be completed. Some cluster regions were revisited due to the later addition of stores from the Suspected Noncompliance Pool and replacement of Participating Retailer Locations.

Data Collection

Data validations within the Portal required In-Person Auditors to collect and submit certain specific data points, including the photographs required by Section I.L. of the Order (pictures of the main cigarette Merchandising Set, placed Corrective-Statement Signs, and an example of Off-Set Promotional Signage, if any). Auditors were required to assign tags to each uploaded photo that reflected the image content (*e.g.*, "Main Cigarette Merchandising Set" tag), spatial elements (*e.g.*, "Main merchandising set for covered brands measures at >9 ft?" tag), and other data based on their observations. Through the tags, In-Person Auditors supplied the Photo Review Team with information for each Corrective-Statement Sign to aid with the subsequent compliance assessment.

Auditors could also indicate if they were unable to complete an audit and provide details regarding the circumstances (e.g., Participating Retailer Location no longer sells cigarettes or appears to be permanently closed). Stores submitted with this information were reviewed by the Photo Review Team and replaced in the audit population where appropriate.

Compliance Assessments

Once audit data was transferred and loaded to the MPD, the Photo Review Team reviewed the submitted photographs and data for each Participating Retailer Location and assessed compliance of the placed Corrective-Statement Signs relative to the terms of the Order. The Photo Review Team issued a compliance determination of either Compliant, Major Noncompliant, or Minor Noncompliant. The Photo Review Team issued Major Noncompliant and Minor Noncompliant determinations based on the definitions outlined in Sections I.O. and I.T. of the Order, respectively, and the examples provided in Exhibits A (Revised Style Guide for Corrective-

²¹ All In-Person Auditors, regardless of whether the audit was on an installation, were equipped with a Letter of Announcement (see *Appendix D. In-Person Audit Letter of Announcement*) and badge to present at the audits.

Statement Signs) and B (Examples of Major/Minor Noncompliance). Participating Retailer Locations having both Major and Minor Noncompliant violations were determined to be Major Noncompliant.

Compliance assessments consisted of a first-pass review where an initial compliance assessment was made for each Participating Retailer Location. Identification of a Major or Minor Noncompliant violation triggered a second-pass review, where a different member of the Photo Review Team affirmed or modified the first-pass reviewer's initial compliance decision. A sample was also selected of Participating Retailer Locations that were deemed Compliant by the first-pass reviewer and sent to the second-pass review for additional validation.

Upon completion of the compliance assessment coding in the MPD, the audit and compliance decision data were exported to a data warehouse where it was stored to facilitate issuing In-Person Noncompliance Notices, reporting, and tracking. Prior to noticing, FTI ran additional quality control checks intended to identify potential issues with the Photo Review Team's compliance decisions and coding. For example, if a Participating Retailer Location was coded as Noncompliant, but there was no noncompliance violation reason selected, this would trigger a validation exception within the data export and the coding team would rectify accordingly.

Issued Noncompliance Notifications

FTI developed an In-Person Noncompliance Notice template, which was initially distributed to the Working Group on October 2, 2023 and approved on October 25, 2023. FTI issued these notices from the *Tobacco_Corrective_Statement_Notification@fticonsulting.com* email address to the Participating Retailer Location found in noncompliance and members of the Working Group. The In-Person Noncompliance Notices were issued within 21 days of the In-Person Audit submission and included the identified Major and/or Minor Noncompliance violation(s) in addition to an overall Major or Minor Noncompliance determination. Each basis for noncompliance was listed by photograph file name, and the referenced photographs were included as attachments to the In-Person Noncompliance Notices.

The Participating Retailer Location email addresses were sourced from the Manufacturers' store listing. For the Participating Retailer Locations for which no email address was provided or the email failed to deliver, FTI physically mailed the notices via overnight delivery. FTI issued 2,347 In-Person Noncompliance Notices, 153 of which required physical delivery.

In-Person Noncompliance Notice Appeals

Overview of Appeals Process

FTI set up an Outlook Mailbox to receive inbound Noncompliance Appeals and automatically disseminate the Appeals to the Working Group for review. Upon the Working Group's review and ruling, they provided FTI with one of the following decisions for each appeal received:

- Appeal Submitted Past Deadline
- Auditor's Determination Affirmed Appealable to Adjudicator
- Auditor's Determination Affirmed Final
- Auditor's Determination Modified
- Auditor's Determination Overturned
- Non-Appeal Response

FTI associated these decisions with a templated notification correspondence developed by the Working Group and dispatched them to the Participating Retailer Locations.

Certain decisions made by the Working Group could be appealed to the Adjudicator. When the Adjudicator reached a determination, the Adjudicator provided the Participating Retailer Location and FTI with their decision via email. Ultimately, the appeal decisions provided to FTI by the Working Group and the Adjudicator informed the Final Determination status of either Compliant, Minor Noncompliant, or Major Noncompliant.

Results of Appeals

The Working Group received 331²² appeals for 318 distinct Participating Retailer Locations related to the 2,347 In-Person Noncompliance Notices sent by FTI.²³ Per Section V.7.g. of the Order, the Adjudicator's decision on a Noncompliance Appeal of a Major Noncompliance determination is appealable to the Court by the Participating Retailer Location or a member of the Working Group; no Court rulings were received during Audit Period 1.

Table 10. Working Group Appeal Decisions Summary

Working Group Appeal Decision	Number of Retailers	Percent of Retailers
Auditor's Determination Overturned	34	10.27%
Auditor's Determination Overturned (V.7.j.) ²⁴	76	22.96%
Non-Appeal Response	96	29.00%
Auditor's Determination Affirmed Final	26	7.85%
Auditor's Determination Modified	15	4.53%
Auditor's Determination Affirmed Appealable to Adjudicator	80	24.17%
Appeal Submitted Past Deadline	4	1.21%
Total	331	100.00%

Table 11. Summary of Determination Changes Based on Appeals²⁵

Auditor Determination Status	Final Determination Status	Number of Retailers	Percent of Retailers
Major Noncompliant	Compliant	80	34.04%
Major Noncompliant	Major Noncompliant	85	36.17%
Major Noncompliant	Minor Noncompliant	13	5.53%
Major Noncompliant	Store Replaced	4	1.70%
Minor Noncompliant	Compliant	25	10.64%
Minor Noncompliant	Major Noncompliant	1	0.43%
Minor Noncompliant	Minor Noncompliant	26	11.06%
Minor Noncompliant	Store Replaced	1	0.43%
Total		235	100.00%

²² 335 appeal decisions were received from the Working Group; however, four appeals were retracted due to Working Group appeal decision clarifications.

²³ For some Participating Retailer Locations, multiple appeals were submitted.

²⁴ FTI's compliance determination was overturned pursuant to Section V.7.j. of the Order. Typically, this indicated that FTI did not make an error in assessing compliance; rather, the Participating Retailer Location did not receive Corrective-Statement Sign(s) from a Manufacturer at all, or in insufficient number to fulfill the requirements of the Order, or that the Corrective-Statement Sign(s) received did not comply with the Order. According to this section, as applicable, the finding of Major Noncompliance counts "as noncompliant for purposes of calculating the Representative Sample Noncompliance Rate" since the noncompliance was discovered during an In-Person Audit.

²⁵ Table excludes the count of Non-Appeal Response retailers (96) from *Table 10. Working Group Appeal Decisions Summary* as these did not result in a determination change.

FTI reviewed all overturned and modified appeal decisions by the Working Group to identify errors made by the Photo Review Team and/or the In-Person Auditor. FTI disseminated guidance to the Photo Review Team and/or In-Person Auditors based on the information gleaned through this process to avoid similar issues going forward.

FTI held training sessions with the Photo Review Team and implemented additional validations based on observed thematic decisions by the Working Group. For example, the Working Group revised previous guidance on December 14, 2023, citing that only required Corrective-Statement Sign(s) at the Participating Retailer Locations should be assessed for compliance, instead of assessing compliance for all placed Corrective-Statement Signs. ²⁶ Training sessions were immediately held with members of the Photo Review Team to disseminate this guidance, and FTI updated and developed validations as a safeguard.

Tip Line Configuration and Results

Overview of Tip Line

Pursuant to Section V.5.a. of the Order, FTI developed and deployed a website ("tobaccosigntipline.com") and a text line ("877.749.8477") for the general public to report instances of suspected noncompliance with the terms of the Order. These channels are available in English and Spanish for use by the public 24 hours a day every day of the week. A report describing the set-up of the tip lines and FTI's analysis of received tips was circulated to the Working Group via email on September 29, 2023.

Tip Line Results and Noticing

Table 12. Summary of Submitted Tips through February 17, 2024

Method	Total	Unable to Map Tip to a Participating Retailer	Responsive	Non- Responsive	Noticed	Previously Noticed
Website	12	0	12	0	10	2
Text Line	1	1	0	0	0	0

The one tip submitted via text message was determined to be for a valid store address but not a Participating Retailer Location; therefore, the tip was not reviewed for compliance and not considered eligible for inclusion in the Suspected Noncompliance Pool.

Of the 12 "Responsive" tips received during the Audit Period 1, 10 tips resulted in a notification sent to the relevant Participating Retailer Location. The two tips which did not result in a notification were instances of multiple tips submitted for the same store.

FTI issued a monthly report to the Working Group detailing the tips received in that month in addition to the cumulative tips.

²⁶ The change in guidance was not retroactively applied to prior compliance determinations (*i.e.*, it was only applied to the Participating Retailer Locations moving forward). If a store was previously found noncompliant on this basis, they had the opportunity to appeal; if an appeal was not received, it would result in a determination of noncompliance.

Tip Line Stores in Suspected Noncompliance Pool

Of the 10 stores identified through the Tip Line as suspected of noncompliance, seven were added to the Audit 1 Suspected Noncompliance Pool and audited. The remaining three stores were identified through the Tip Line after the Suspected Noncompliance Pool had reached 4,000 stores. As such, these three stores will be added to the list of Participating Retailer Locations in the Suspected Noncompliance Pool for Audit Period 2 eligible to be selected by Plaintiffs for an In-Person Audit.

Table 13. Suspected Noncompliance Pool Period for Tip Line Stores

TD Linx #s	Number of Retailers	SNP Period
0430665, 1495323, 1537004, 1894244, 1996718, 2253854, 7907670	7	Audit 1
0388483, 0638692, 0860328	3	Audit 2

Result of In-Person Audits

Overview of Compliance Findings

As discussed in the *Final Participating Retailer Location Population* section, 9,875 stores were subject to In-Person Audits. After accounting for appeal modifications or overturns of the Auditor's initial compliance determinations, FTI determined that 7,639 or 77% of Participating Retailer Locations met the compliance requirements set forth in the Order for Audit Period 1. The remaining 2,236 or 23% of Participating Retailer Locations received a Final Determination of Noncompliance for Audit Period 1 (the "Noncompliant Retailers"). Of the Noncompliant Retailers, 1,587 or 71% were determined to have at least one instance of Major Noncompliance.

Table 14. Final Compliance Determinations by Retailer Sample Pool Type

Pool Type	Compliant	Major Noncompliant	Minor Noncompliant
Representative Sample Pool	4,729	886	260
Suspected Noncompliance Pool	2,820	680	375
Both Pools	90	21	14
Total	7,639	1,587	649

Based on the Final Determinations, 1,572²⁷ Participating Retailer Locations must place an additional 144 square inch Corrective-Statement Sign ("penalty sign") for the remainder of the Implementation Period, or until June 30, 2025, pursuant to Section VI.2.a. of the Order.²⁸ Under Section VI.2.a. of the Order, Participating Retailer Locations not visited by the Manufacturers' representatives since the beginning of the Posting Period do not need to post a penalty sign when an instance of Major Noncompliance has been identified, and therefore, should not be included in the total number of required penalty signs. This did not apply to any Participating Retailer Locations in Audit Period 1.

²⁷ The Manufacturers have identified 15 Major Noncompliant stores which are no longer under contract or are temporarily closed, and therefore, do not require penalty signs.

²⁸ The population of Participating Retailer Locations requiring a penalty sign is not impacted by the inclusion or exclusion of the Participating Retailer Location from Audit Period 2 store listing.

As of March 11, 2024, FTI received photographs of penalty signs for 1,241 or 79% of the Participating Retailer Locations subject to the requirement. While FTI ingested the penalty sign data into the MPD and tracked receipt of these submissions, the photographs were not reviewed for compliance. The penalty sign placement for applicable Participating Retailer Locations will be assessed for compliance in Audit Period 2 to the extent the store has been selected for an In-Person Audit. FTI has not sent any notices for failure to submit proof of penalty sign placement during Audit Period 1²⁹. The detailed schedule of final compliance decisions and penalty sign requirements for each Participating Retailer Location may be found in *Exhibit 2. Schedule of Compliance Decisions for Participating Retailer Locations*.

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, resulting in a Representative Sample Noncompliance Rate for Audit Period 1 of 11.02%. The formula described in the Order is as follows:

$$\frac{\sum_{i=1}^{Total\,Sampled\,retailers}RetailerNC_i\ x\ RetailerSales_i}{\sum_{i=1}^{Total\,Sampled\,retailers}RetailerSales_i}$$

The Representative Sample Noncompliance Rate is determined by summing sales (*i.e.*, volume of Covered Brands of cigarettes shipped to the Participating Retailer Location in the last 12 months) for all Participating Retailer Locations in the Representative Sample that had a Final Determination of Major Noncompliance or met the criteria cited in Section V.7.j. of the Order ("Retailer_NC_iX Retailer_sales_i"). The result is then divided by the sum of sales for all Participating Retailer Locations sampled as part of the Representative Sample ("Retailer_sales_i"). The values for the variables used to calculate the Representative Sample Noncompliance Rate are cited below.

Table 15. Summary of Representative Sample Noncompliance Rate Calculation

Retailer_NC _i X Retailer_sales _i	Retailer_sales _i	Representative Sample Noncompliance Rate
		11.02%

In-Person Audit compliance determinations for Participating Retailer Locations selected only from the Suspected Noncompliance Pool are not factored into the Representative Sample Noncompliance Rate. The detailed schedule of the Participating Retailer Locations included or excluded in the Representative Sample Noncompliance Rate is in *Exhibit 3. Schedule of Representative Sample Noncompliance Rate Classifications*.

Representative Sample Noncompliance Rate Input Observations



²⁹ The Order does not state that the Auditor is required to send notices for failure to submit proof of the penalty signs or enforce the Manufacturers' responsibility to provide proof of the additional signage.



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 to be less than 15% for Audit Period 1, and therefore, concluded that the Manufacturers are not subject to the civil penalty discussed in Section VI.4. of the Order.

Attestation

I, David Turner, 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.

David Turner

Senior Managing Director, FTI Consulting, Inc.

Appendix A. Documents Reviewed and Relied Upon

Date Provided	Document Name	Document Description
4/11/2023	Order# 129 - Remand Fourth Superseding Consent Order Implementing the Corrective-Statements Remedy at Point of Sale	Consent Order (Document 6522, filed on 12/06/2022) entered into the case <i>United States v. Phillip Morris et al.</i> (99-CV-2496) (the "Order").
4/11/2023	Exhibit A–Revised Style Guide for Corrective-Statement Signs (including Spanish language)	Attachment to the Order.
4/11/2023	Exhibit B–Examples of Major/Minor Noncompliance	Attachment to the Order.
10/7/2023	2023.10.07 Audit Period 1 Store List - PM, AG, RJRT, ITG- CONFIDENTIAL SUBJECT TO P.O. IN US V PM, ET AL, 99CV2496.xlsx	The combined listing of Participating Retailer Locations pursuant to Section V.3. of the Order, consisting of 218,034 records (the "store listing").
10/13/2023	2023.10.13 Temp Closed Store List (Public Version).xlsx	A listing of 1,105 Participating Retailer Locations the Manufacturers flagged as potentially temporarily closed.
10/13/2023	2023.10.13 List of Military Stores Shipped POS (Public Version).xlsx	A listing of 189 Participating Retailer Locations flagged as located on military installations that the Manufacturers' representatives did not visit and were shipped Corrective-Statement Signs for the Participating Retailer Locations to place themselves.
10/13/2023	fti_id_list_20231013.xlsx	In the store listing, FTI identified duplicate, missing, and invalid (i.e., not seven digits) TD Linx # identifiers for the Participating Retailer Locations. FTI assigned unique IDs to these Participating Retailer Locations and the listing of 1,174 records was provided to the Working Group.
10/17/2023	2023.10.17 List of Stores Provided Signs (Public Version).xlsx	The listing of 27 non-Duty-Free Participating Retailer Locations that the Manufacturers' representatives did not visit, and instead, were shipped Corrective-Statement Signs for the Participating Retailer Locations to place themselves.
10/25/2023	List of Military Stores (Public Version).xlsx	A listing of 788 Participating Retailer Locations the Manufacturers flagged as located on military installations.
11/28/2023	11_28_Potential_SNP.xlsx	The analysis provided by FTI and leveraged by the Plaintiffs for the initial selection of 3,000 Participating Retailer Locations from the Suspected Noncompliance Pool.
12/18/2023	12_15_Potential_SNP.xlsx	The analysis provided by FTI and leveraged by the Plaintiffs for the subsequent selection of the remaining 1,000 Participating Retailer Locations from the Suspected Noncompliance Pool and 100 alternates.
1/5/2024	01_05_Potential_SNP_Additional Alternates.xlsx	The listing of 200 additional Participating Retailer Locations selected as alternates for Suspected Noncompliance Pool replacements.

Appendix B. Additional Assumptions, Considerations, and Critical Decisions

Sample Pool Selection

- 1. During the construction of the Representative Sample selection, FTI identified that the Order's sampling methodology resulted in the selection of 6,004 Participating Retailer Locations rather than the population of 6,000 cited in the Order. To limit the sample to 6,000 while still following the Representative Sample selection methodology designated by the Order, FTI and the Working Group decided to implement the following solution during the Weekly POS Consent Order Meeting on October 3, 2023:
 - a. Following the selection of the 6,004 Participating Retailer Locations, FTI used a random number generator to generate four distinct numbers between 1 to 19 corresponding to the number of seeded sets. For example, if the random number generated was 19, this maps to Seed Set 19. Within each selected seeded set, the last generated position number (corresponding to a Participating Retailer Location) is dropped.
- 2. Section I.QQ. of the Order indicates the Representative Sample Pool is "an audit pool that includes all Participating Retailer Locations nationwide, including those in the Suspected Noncompliance Pool." This allowed for the possibility of overlapping selections from the Representative Sample and Suspected Noncompliance Pool populations. At the POS Signage Compliance Group meeting held on October 3, 2023, all parties agreed that if such overlap occurred, the Participating Retailer Location would be audited once and counted for both the Representative Sample and Suspected Noncompliance Pools; additionally, these Participating Retailer Locations would be eligible for inclusion in the Representative Sample Noncompliance Rate should they receive a Final Determination of Major Noncompliance.

In-Person Audit Population and Procedures

- 1. While conducting an In-Person Audit of a Participating Retailer Location selected as part of the Suspected Noncompliance Pool (TD Linx # 1721277), an Auditor reported being physically accosted after the owner refused the In-Person Audit. On January 16, 2024, FTI informed the Working Group of the incident and implemented the following approach to ensure the safety of the In-Person Auditors:
 - a. TD Linx # 1721277 would be found in Major Noncompliance for Audit Period 1 and not revisited in any subsequent Audit Periods.
 - b. Auditors would be instructed not to attempt an In-Person Audit should they feel the environment were unsafe. In these instances, FTI would replace the Participating Retailer Location with another using the applicable replacement methodology.
- 2. Pursuant to Section V.3. of the Order, the Manufacturers' store listing provides certain data for each Participating Retailer Location (e.g., which locations are Kiosk stores, Non-Kiosk Stores with more than 9-horizontal linear feet of visible Merchandising Set space devoted to Covered Brands). FTI conducted In-Person Audits based on the state of the Participating Retailer Location and signage observed on-site and did not rely on the information provided in the store listing regarding the Store Type, number of placed Corrective-Statement Signs, and size of Main Cigarette Merchandising Set.
- 3. Pursuant to Section V.6.f. of the Order, the population of selected Participating Retailer Locations must remain confidential "until after the completion of the In-Person Audits." Except for outreach to determine access procedures for Participating Retailer Locations located on restricted facilities, the In-Person Audit population was not disclosed to any party not defined in the Order prior. Since the Suspected Noncompliance Pool exceeded 4,000 stores, the Plaintiffs had to select the population of

stores to be audited. It was assumed that the requirement to select the Suspected Noncompliance population superseded the confidentiality requirement of the audit population.

a. Once the In-Person Audit was completed, photographs and data submitted for the Participating Retailer Location were made available for viewing by the members of the Working Group in the MPD. FTI defined completion of the In-Person Audit as the point when the Photo Review Team had completed the compliance assessments and any applicable In-Person Noncompliance Notice was issued.

In-Person Audit Noncompliance Notice

- 1. Section V.6.e. of the Order requires that the In-Person Noncompliance Notice be issued "by email within 21 days of the In-Person Audit." FTI defined the In-Person Audit date as the date in which the audit data was submitted to the Portal.
- 2. Section VI.2.a of the Order indicates the retailer will "receive a warning letter from the Auditor that subsequent findings of Major Noncompliance will result in required payments." This warning was included as part of the In-person Noncompliance Notice (*i.e.*, there was not a separate warning letter).

Final Determinations

According to Section V.7.a. of the Order, the "In-Person Noncompliance Notice will become a Final
Determination of Noncompliance 15 days after it is issued, unless there is a Noncompliance Appeal." In
cases of a first Final Determination of Major Noncompliance, proof of the additional signage required
under Section VI.3. of the Order must be submitted "within 30 days after such actions were required to
be completed." FTI assumed that the Final Determination Date is the date triggering the required
actions.

Store Location Validation

When validating the store listing name and address data, FTI employed a series of assumptions if the data could not be verified or was insufficient for ensuring the In-Person Auditor visited the correct location:

- 1. Travel center locations often had multiple stores listed at the same address. If the store listing name contained "Fuel," it was assumed that these referred to the smaller kiosk locations by the fuel pumps. Other travel centers listed "C Stores." These were assumed to be the smaller convenience stores on the premises and not the main travel center store. There were 75 Travel Center Participating Retailer Locations in the audit population with 14 containing "Fuel" in the name. While no Participating Retailer Locations in the audit population had "C Store" in their name, there were at least two of the "C Stores" that shared an address with a Participating Retailer Location in the audit population which helped inform the correct audit location.
- 2. If the Google Maps address was not associated with a different Participating Retailer Location in the store listing and the store listing data failed validation, FTI assumed that the Google Maps address was correct. Out of the 10,176 addresses that were reviewed, there were 3,182 Participating Retailer Locations (31%) with a final street address that differed from the provided street address. Examples of the differences include:
 - a. Abbreviations such as TD Linx # 0653188 listed at 1 E <u>Saint</u> Charles Rd, Lombard, IL which was confirmed as 1 E <u>St</u> Charles Rd, Lombard, IL.

- b. Street numbers such as TD Linx # 7212627 listed at <u>10450</u> N La Canada Dr, Oro Valley, AZ which was confirmed as 10590 N La Cañada Dr, Oro Valley, AZ.
- c. Completely different addresses such as TD Linx # 0568154 listed at <u>PO Box 135</u>, Whitesburg, GA, which was confirmed as 10 GA-5, Whitesburg, GA.
- 3. Participating Retailer Locations listed at the same address were analyzed to determine if there were separate stores to audit at the location. In some cases, the store name was sufficient for differentiation such as "Kroger" versus "Kroger FC (Fuel Center)." With other duplicates, stores could not be differentiated solely based on the name, and FTI leveraged the volume of Covered Brands shipped to make assumptions about the correct location based on the store size. It was assumed that larger Participating Retailer Locations received a higher sales volume of Covered Brands than smaller ones. There were only two sets of duplicate records where this assumption was made: fti2906 and fti2908; and fti3056 and fti3057. For example, TD Linx # fti3056 was a travel center location that had the same name ("TA Spartanburg") and address ("1402 E Main St, Duncan, SC 29334-9690") as TD Linx # fti3057. However, there appeared to be two distinct locations at the address: one for a main travel center store, and one for a smaller kiosk in a gas station parking lot.

Tip Line

- 1. Section V.5.a of the Order indicates "the Auditor shall notify the Participating Retailer Location and the Working Group of such suspected noncompliance" but there is no discussion of how to notify the Participating Retailer Location in the event of a missing email address or bounce back. As agreed upon with the Working Group during an October 3, 2023 meeting, FTI would not mail physical notices to Participating Retailer Locations in the event of a missing email address or bounce back.
- 2. When reviewing the tips, FTI considered responses of "Unsure" to any "Yes/No/Unsure" formatted questions to be a nonresponsive answer. These answers are not applied to the "Responsive"/"Non-Responsive" tip determination.

Appendix C. Fields Provided to Plaintiffs for Selection of Suspected Noncompliance Pool

Provided Field Name
TD Linx ID
Store Name
Advertising Name
Address
City
State
ZipCode
Spanish Qualified Census Tract Indicator
Census Tract
Store Type
Main Merch Set 9ft
Offset Promotional Material
Number of Signs
SNP Category
Store Compliance Status

Appendix D. In-Person Audit Letter of Announcement







October 8, 2023

To Store Employees:

This letter is to inform you that FTI Consulting is conducting in-person store audits pursuant to your store's contract with one or more of Philip Morris USA, R.J. Reynolds Tobacco Company, and ITG Brands (the "Manufacturers") and the Consent Order entered into in the case United States v. Philip Morris et al. (99-CV-2496) related to corrective statement signs at point of sale. The in-person auditors will document and photograph all signage and store elements required to determine compliance with the Consent Order.

The in-person auditors will make all reasonable efforts not to interfere with your store's standard business activities. They are not authorized to go behind the sales counter unless absolutely necessary for assessing spatial requirements (i.e., taking measurements or photos). If the auditor determines it is necessary to go behind the counter, a store employee must accompany them.

If you have any questions or concerns about the auditors being at your location to perform the activities listed above, please contact one of your representatives from the Manufacturers.

Appendix E. Consent Order and Report Definitions

Consent Order Definitions

Acquired Brands: means the Winston, Salem, Kool, and Maverick brands.

<u>Adjudicator</u>: means a third-party engaged to expeditiously hear appeals from (i) Working Group decisions on Noncompliance Appeals in the circumstances provided in Section V. 7, below; and (ii) tie breaking decisions of the Mediator. The Adjudicator's costs and fees shall be paid for by Manufacturers.

Audit Period: means a nineteen-week period during which In-Person Audits take place.

<u>Auditor</u>: means one or more firms unaffiliated with and independent of any Manufacturer and acceptable to Plaintiffs that are retained by a Manufacturer or the Manufacturers to conduct In-Person Audits, review the Photo Database, administer the Tip Line, address and monitor audit results, and report on the same to the Working Group as required by this Order, either itself or through one or more subcontracts.

<u>Corrective-Statement Signs</u>: means signs to be displayed in Participating Retailer Locations as provided in this Order and designed in accordance with the Style Guide attached hereto as Exhibit A, with the image files used for printing signs provided by the Government.

Court-Ordered Corrective Statements: means the messages prescribed by Order #72-Remand.

Covered Brand: means any brand of cigarette marketed by a Defendant and any Acquired Brand.

<u>Defendant</u>: means each of the following: Altria Group, Inc., R.J. Reynolds Tobacco Company, Lorillard Tobacco Company, and Philip Morris USA Inc. To the extent any obligations under this Order pertaining to Lorillard Tobacco Company have been transferred to R.J. Reynolds Tobacco Company, as contemplated by the Notice of Transaction Involving Defendants R.J. Reynolds Tobacco Company and Lorillard Tobacco Company (Dkt. No. 6141; filed Apr. 7, 2015), such obligations shall apply to R.J. Reynolds Tobacco Company.

Effective Date: means the date on which this Order is entered.

<u>Final Determination of Noncompliance</u>: means a determination that a Participating Retailer Location is out of compliance with the Participating Retailer's contractual obligations to Manufacturers under this Order after (i) the timelines for contesting an In-Person Noncompliance Notice have expired without the filing of a timely Noncompliance Appeal (ii) if a Noncompliance Appeal is timely filed, the Working Group has affirmed the Auditor's findings of noncompliance and no appeal is permitted, or the timelines for contesting that determination have expired, or (iii) the Adjudicator affirmed the Auditor's findings of noncompliance and no appeal is permitted, or the timelines for contesting that determination have expired.

<u>Implementation Period</u>: means the twenty-one month period beginning on the first day of the first month following the Posting Period.

<u>In-person Audit</u>: means a visit to a Participating Retailer Location by the Auditor during which the Auditor shall photograph (i) the main cigarette Merchandising Set, (ii) any displayed Corrective-Statement Signs, and (iii) an example of Off-Set Promotional Signage for Covered Brands displayed by the Participating Retailer Location, if any, in as many images as are sufficient to show compliance with this Order or to adequately document noncompliance with this Order.

<u>In-person Noncompliance Notice</u>: means a letter issued by the Auditor notifying the Participating Retailer Location and the Working Group that the Auditor conducted an In-person Audit of the Participating Retailer Location and found the Participating Retailer Location not compliant with the terms of this Order, and specifically identifying the basis for the Auditor's finding of noncompliance, as well as whether the Auditor deemed the Participating Retailer Location to be in Major Noncompliance or Minor Noncompliance. The Inperson Noncompliance Notice shall be sent to the Participating Retailer Location at the email address provided for notice in the Participating Retailer Contract and shall also be sent to each member of the Working Group by email. If no email address is available and/or the sender receives a bounce-back or failed delivery message, the In-person Noncompliance Notice shall be sent via overnight delivery.

<u>Kiosk Store</u>: means (1) a Store that does not allow customers to enter and that has a selling window in front of one or more selling counters between the customer and Store personnel, or (2) a Store that is no more than 325 square feet in area, not including restrooms, regardless of whether customers are allowed to enter the Store.

<u>Major Noncompliance</u>: means a failure to post a required Corrective-Statement Sign, or an obstruction of a Corrective-Statement Sign in a manner that results in the Preamble, message, or icon not being visible from the customer's vantage point, including, but not limited to, the examples given in Exhibit B.

<u>Major Noncompliance Notice</u>: means an In-person Noncompliance Notice that identifies the noncompliance with the terms of this Order to be Major Noncompliance.

Manufacturer: means a Defendant or ITG Brands, LLC.

<u>Mediator</u>: means a third-party engaged to assist in expeditiously resolving disputes of the Working Group and to cast a tie breaking vote in the event of a tie of the Working Group. The Mediator's costs and fees shall be paid for by Manufacturers.

<u>Merchandising Set</u>: means any rack, shelving, display, or fixture at a Store, including any canopy or header, used in whole or in part to merchandise one or more Covered Brands of cigarettes that are visible to customers.

<u>Minor Noncompliance</u>: means noncompliance with this Order's provisions for the Corrective-Statement Sign other than Major Noncompliance, and is defined to include, but is not limited to, the examples given in Exhibit B.

<u>Minor Noncompliance Notice</u>: means an In-person Noncompliance Notice that identifies the noncompliance with the terms of this Order to be Minor Noncompliance.

Noncompliance Appeal: means a written appeal by a Participating Retailer Location or Working Group member to the Working Group, submitted by email within 14 days after the In-Person Noncompliance Notice is sent by the Auditor, setting forth the basis for challenging the Auditor's finding. A Noncompliance Appeal may accept the finding of noncompliance, but challenge whether the noncompliance constitutes Major Noncompliance. A Noncompliance Appeal may include supporting evidence, which may include photos.

Non-Kiosk Store: means a Store other than a Kiosk Store.

<u>Off-Set Corrective-Statement Sign</u>: means a Corrective-Statement Sign required because of Off-Set Promotional Signage.

<u>Off-Set Promotional Signage</u>: means Promotional Signage that is not placed within the four comers of the Merchandising Set, which for the avoidance of doubt, includes any canopy or header.

Participating Retailer: means a retailer that is a party to a Participating Retailer Contract.

<u>Participating Retailer Contract</u>: means a contract with a retailer that permits the Manufacturer (i) to choose the placement of Covered Brands of cigarettes in or on a Merchandising Set related to Covered Brands or (ii) to approve, place, remove, or require the placement or removal of advertising, marketing, promotional or other informational material that advertises, markets, or promotes its Covered Brands in a Store.

<u>Participating Retailer Location</u>: means a Store with respect to which a Manufacturer has a Participating Retailer Contract.

Plaintiffs: means the United States and the Public Health Intervenors.

<u>Photo Database</u>: means the database maintained and reviewed by the Auditor to which Manufacturer representatives will and Participating Retailers can submit photos of Corrective-Statement Signs as posted in a Participating Retailer Location.

<u>Photo Noncompliance Notice</u>: means a written letter issued by the Auditor notifying the Participating Retailer Location that the photo submitted of its Participating Retailer Location suggests noncompliance with the terms of this Order.

<u>POS Corrective Statements</u>: means a modified version of the Court Ordered Corrective Statements using the POS Preamble and dividing the Court Ordered Corrective Statements among 17 distinct messages as reprinted in attached Exhibit A at p. 9.

<u>POS Preamble</u>: means a modified version of the sourcing language from the Court-Ordered Corrective Statements. In approximately one-half of the Corrective-Statement Signs the shortened preamble text will read "A FEDERAL COURT HAS ORDERED R.J. REYNOLDS TOBACCO & PHILIP MORRIS USA TO STATE:" and in approximately one-half of the Corrective-Statement Signs the shortened preamble text will read "A FEDERAL COURT HAS ORDERED PHILIP MORRIS USA & R.J. REYNOLDS TOBACCO TO STATE:".

<u>Posting Period</u>: means the three-month period beginning on the first day of the first month following the Ramp-Up Period.

<u>Price Promotion</u>: means any Manufacturer-provided discount on the price of cigarettes that the Participating Retailer must apply to reduce the retail price of cigarettes (e.g., a Manufacturer pays a Participating Retailer an amount equal to \$0.50 per pack of cigarettes to reduce the price of specific Covered Brands of cigarettes by \$0.50 per pack of cigarettes).

<u>Promotional Signage</u>: means material displayed at a Participating Retailer Location that advertises, markets, or promotes one or more Covered Brands, but does not include the products themselves or signage that solely identifies brand and price (without using an advertising slogan, tagline, or imagery other than a brand logo or image of a branded cigarette package).

<u>Public Health Intervenors</u>: means the Tobacco-Free Kids Action Fund, American Cancer Society, American Heart Association, American Lung Association, Americans for Nonsmokers' Rights, and the National African American Tobacco Prevention Network.

<u>Qualifying Census Tract:</u> means a U.S. Census tract where (a) twenty percent (20%) or more of the total population of the U.S. Census tract is of Hispanic origin, and (b) twenty percent (20%) or more of the population of Hispanic origin in that U.S. Census tract speaks a language other than English at home and speaks English less

than "very well." U.S. Census tracts shall be determined using the most recent available five-year estimates from the American Community Survey that have been released by the United States Census Bureau as of the Effective Date.

<u>Ramp-Up Period</u>: means the six-month period beginning on the first day of the first month following the Effective Date.

<u>Remedies Party</u>: means each of the following: ITG Brands, LLC, Commonwealth Brands, Inc., and Commonwealth-Altadis, Inc.

Representative Sample: means a sample of Participating Retailer Locations selected using the following method:

- 1. Sort a list of all Participating Retailer Locations according to the following strata:
- a. According to the Participating Retailer Location's presence in one of the four United States Census Regions or its presence in any United States Territory taken as a fifth group;
- b. Then within each of those strata, by the volume of Covered Brands of cigarettes shipped to the Participating Retailer Location in the previous 12 months, from most to least.
- 2. Then draw a sample of 6,000 from the sorted list of Participating Retailer Locations in 19 distinct replicates, as follows:
- a. Calculate a sampling interval (SI) using the formula SI= $(19 \times N')$ / 6,000 (rounding SI if necessary down to the next integer), where N' is the total number of Participating Retailer Locations in the sorted list;
 - b. Draw 19 unique random numbers from the interval inclusive of 1 to SI;
- c. Create 19 sets of numbers (seeded sets) by using each of the 19 unique random numbers as a seed (S), as follows: { S, S + SI, S + 2xSI, S + 3xSI, ... S + ixSI}, where i is 315 [[i.e., (6,000/19) 1]]; and
- d. Create 19 distinct replicates by using the 19 seeded sets to draw from the sorted list the Participating Retailer Locations at the positions corresponding to the numbers in the set.

<u>Representative Sample Noncompliance Rate</u>: means the noncompliance rate of the Representative Sample calculated as follows:

$$\frac{\sum_{i=1}^{Total~Sampled~retailers}~\text{Retailer_NC}_i \times \text{Retailer_sales}_i}{\sum_{i=1}^{Total~Sampled~retailers}~\text{Retailer_sales}_i}$$

This calculation uses the below definitions:

- "Sales" means volume of Covered Brands of cigarettes shipped to the Participating Retailer Location in last 12 months.
- "i" shall be used to denote 1 to the total number of sampled Participating Retailer Location.
- "Retailer sales;" equals sales for each sampled Participating Retailer Location "i"

"Retailer_NCi" equals (i) 1 if the Participating Retailer Location is found to have one of more incidences
of Major Noncompliance or (ii) 0 if Participating Retailer Location is found to have no incidences of
Major Noncompliance.

<u>Representative Sample Pool</u>: means an audit pool that includes all Participating Retailer Locations nationwide, including those in the Suspected Noncompliance Pool

<u>Retailer Groups</u>: means the National Association of Convenience Stores ("NACS") and the National Association of Tobacco Outlets ("NATO").

<u>Rotation Period</u>: means the three-month window comprising months 10, 11, and 12 of the 21-month Implementation Period, after the first two Audit Periods and before the final two Audit Periods.

<u>Semi-Permanent Display</u>: means an advertising, marketing, or promotional display that requires specialized labor or more expense to install or remove than does a standard Promotional Signage.

<u>Set-Adjacent Corrective-Statement Sign</u>: means a Corrective-Statement Sign posted because of the presence of a Merchandising Set at a Participating Retailer Location.

<u>Spanish Version</u>: means the text of the Corrective-Statement Signs translated into Spanish, as set forth in the Style Guide attached to this Order as Exhibit A.

Store: means a premises where cigarettes are offered for sale to consumers.

<u>Suspected Noncompliance Pool</u>: means an audit pool consisting of Participating Retailer Locations (a) for which no photo showing compliance has been submitted (to be included in this pool in only the first Audit Period and third Audit Period), (b) that have been flagged as suspected of noncompliance by the Tip Line and not previously been audited based on the Tip Line communication that triggered its inclusion in the Suspected Noncompliance Pool, or (c) that were found in Major Noncompliance via In-Person Audit in the immediately prior Audit Period.

<u>Tip Line</u>: means a system designed to accept telephonic and online submissions from members of the public concerning incidences of suspected noncompliance with this Order for review by the Auditor.

<u>Working Group</u>: means a group consisting of ten individuals: three individuals appointed by the Department of Justice, two individuals appointed by the Public Health Intervenors, one individual appointed by each of (i) Altria Group, Inc., or Philip Morris USA Inc. (ii) R.J. Reynolds Tobacco Company and (iii) ITG Brands, LLC, and one individual appointed by each of the two Retailer Groups.

Report Definitions

<u>Alternates</u>: means randomly selected Participating Retailer Locations from the Suspected Noncompliance Pool that were not initially selected for In-Person Audits. Alternates were used to replace stores selected from the Suspected Noncompliance Pool that required replacement.

<u>Appeal Submitted Past Deadline</u>: means the noncompliance determination by FTI was upheld through the appeals process as the appeal was received after the established deadline for accepting appeals. One of the Working Group appeal decision categories.

<u>Auditor's Determination Affirmed Appealable to Adjudicator</u>: means the Working Group upheld FTI's noncompliance determination, but the decision could be further appealed to the Adjudicator as 1) it was a Major Noncompliance determination or 2) it was a Minor Noncompliance determination where there was a tie vote by the Working Group. One of the Working Group appeal decision categories.

<u>Auditor's Determination Affirmed Final</u>: means the noncompliance determination by FTI was upheld through the appeals process. One of the Working Group appeal decision categories.

<u>Auditor's Determination Modified</u>: means the noncompliance determination by FTI was modified through the appeals process. Examples of modifications could include downgrading the noncompliance from Major to Minor or removing one of multiple noncompliance violations. One of the Working Group appeal decision categories.

<u>Auditor's Determination Overturned</u>: means the compliance determination made by FTI was overturned via an appeal. One of the Working Group appeal decision categories.

<u>Auditor's Determination Overturned (V.7.j.)</u>: means FTI's compliance determination was overturned pursuant to Section V.7.j of the Order. Typically, this indicated that FTI did not make an error in assessing compliance; rather, the Participating Retailer Location did not receive Corrective-Statement Sign(s) from a Manufacturer at all, or in insufficient number to fulfill the requirements of the Order, or that the Corrective-Statement Sign(s) received did not comply with the Order. According to this section, as applicable, the finding of Major Noncompliance counts "as noncompliant for purposes of calculating the Representative Sample Noncompliance Rate" since the noncompliance was discovered during an In-Person Audit.

<u>Compliance Assessment/Determination</u>: means the process of reviewing submitted photos and data for a Participating Retailer Location and determining whether the Location's posted signs, or lack thereof, are posted correctly based on the requirements outlined in the Order and Exhibits A (Revised Style Guide for Corrective-Statement Signs) and B (Examples of Major/Minor Noncompliance). A compliance determination will include identification of the specific bases for noncompliance, if applicable.

<u>Duty-Free</u>: means a Participating Retailer Location selling duty-free products. Locations were typically in airports or near border crossings.

<u>In-Person Audit Population</u>: means the population of Participating Retailer Locations subject to an In-Person Audit during the Audit Period. The Representative Sample and selections from the Suspected Noncompliance Pool combine to create the In-Person Audit population (a maximum of 10,000 Participating Retailer Locations, excluding replacement stores).

<u>Letter of Announcement</u>: means the letter presented to store employees by In-Person Auditors explaining the purpose for the audit. A copy of the letter is contained in Appendix D.

<u>Manufacturers' Representatives</u>: means the individuals conducting store visits on behalf of the Manufacturers who are responsible for Corrective-Statement sign placement, rotation, compliance remediation, and/or gathering of data and photos. While this term is included in the Order, it is not explicitly defined.

<u>Master Photo Database ("MPD")</u>: means the Relativity database where photos and data collected in the field are housed for multi-level photo analysis by FTI's Photo Review Team and viewing by the Working Group.

<u>Military Location</u>: means a Participating Retailer Location on a military installation. Access to the store was typically restricted, with varying levels of access requirements depending on the base.

<u>Non-Appeal Response</u>: means a response to a noncompliance notice was made by a retailer but did not rise to the level of an appeal. One of the Working Group appeal decision categories.

<u>Noncompliant Retailers</u>: means the group of retailers that had a Final Determination of Noncompliance as a result of an In-Person Audit during Audit Period 1.

<u>Noncompliant Stores After Resubmission</u>: means a Participating Retailer Location with an initial submission in the Posting Period deemed noncompliant, and a subsequent resubmission made within 30 days of the noncompliance notice was also deemed noncompliant. One of the Suspected Noncompliance Pool categories qualifying a Participating Retailer Location for inclusion in the Suspected Noncompliance Pool.

<u>Noncompliant Stores with No Resubmissions</u>: means a Participating Retailer Location with an initial submission in the Posting Period deemed noncompliant and no subsequent valid resubmission was made within 30 days of the noncompliance notice to demonstrate remediation of the compliance violation. One of the Suspected Noncompliance Pool categories qualifying a Participating Retailer Location for inclusion in the Suspected Noncompliance Pool.

<u>Penalty Sign</u>: means an additional 144 square inch Corrective-Statement Sign (or a 20 x 22 standing frame sign in Duty-Free stores) that Participating Retailers found in Major Noncompliance during an In-Person Audit must post for the remainder of the Implementation Period, or until June 30, 2025, pursuant to Section VI.2.a. of the Order.

<u>Photo Insufficient</u>: means a submission during the Posting Period for which a compliance determination for a Participating Retailer Location could not be made due to the poor quality of the provided photos.

<u>Photo Insufficient Stores with No Resubmissions</u>: means a Participating Retailer Location with an initial submission in the Posting Period deemed Photo Insufficient and no subsequent valid resubmission was made. One of the Suspected Noncompliance Pool categories qualifying a Participating Retailer Location for inclusion in the Suspected Noncompliance Pool.

<u>Photo Review Team</u>: means the FTI team responsible for viewing submitted photos and determining the compliance status of the Corrective-Statement signage for each Participating Retailer Location.

<u>POS Signage Compliance Portal ("Portal")</u>: means the FTI developed audit submission site where In-Person Auditors submit their photos and data collected during their audits.

<u>Representative Sample Replacement Methodology</u>: means the process by which Participating Retailer Locations from the Representative Sample were replaced with a store following the criteria described in Section V.6.c of the Order.

<u>Responsive Tip</u>: means a tip which indicates the associated Participating Retailer Location is not Compliant with the terms of the Order.

Spanish Qualified Census Tract Indicator: means a "Y" or "N" value in the store listing provided by the Manufacturers on October 7, 2023 assigned to most of the Participating Retailer Locations. For stores in a Qualifying Census Tract, the Set-Adjacent Corrective-Statement Sign must be in English and any second Corrective-Statement Sign (if required) must be in Spanish. If a Participating Retailer Location must display more than two signs, the additional sign(s) beyond the first two shall be in English and the Participating Retailer Location may choose which sign to display in Spanish.

<u>Store Location Evidence</u>: means photograph(s) uploaded by the In-Person Auditor to demonstrate the location of the audit.

<u>Stores with No Posting Period Submission</u>: means a Participating Retailer Location with no submission in the Posting Period, excluding Participating Retailer Locations in which a Posting Period submission was not required per the Order. One of the Suspected Noncompliance Pool categories qualifying a Participating Retailer Location for inclusion in the Suspected Noncompliance Pool.

<u>Stores with Only Invalid Posting Period Submissions</u>: means a Participating Retailer Location with only invalid submissions in the Posting Period that could not be sent to the Photo Review Team for a compliance determination, excluding Participating Retailer Locations in which a Posting Period submission was not required per the Order. One of the Suspected Noncompliance Pool categories qualifying a Participating Retailer Location for inclusion in the Suspected Noncompliance Pool.

<u>Suspected Noncompliance Pool Replacement Methodology</u>: means the process by which Participating Retailer Locations selected from the Suspected Noncompliance Pool were replaced with an alternate store from the residual population of stores in the Suspected Noncompliance Pool (*i.e.*, not initially selected for In-Person audits).

<u>TD Linx #</u>: means a unique 7-digit identifier assigned to each Participating Retailer Location.

<u>Tip Line Submissions</u>: means a tip which was received via the Tip Line. One of the Suspected Noncompliance Pool categories qualifying a Participating Retailer Location for inclusion in the Suspected Noncompliance Pool.