

SEPTEMBER 5, 2024



IN-PERSON AUDIT PERIOD 2 REPORT

- REDACTED

IN-PERSON AUDITS OF PARTICIPATING RETAILER LOCATIONS

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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 second Audit Period (February 18, 2024 through June 30, 2024), FTI completed In-Person Audits and compliance assessments of 7,513 Participating Retailer Locations drawn from the Representative Sample Pool and Suspected Noncompliance Pool. Refer to the In-Person Audit Period 1 Report for details on the In-Person Audit process.

Source Data and Data Validation Procedures

Source Data Overview

To facilitate the In-Person Audits conducted during Audit Period 2, the Manufacturers provided several datasets, including the combined listing of Participating Retailer Locations (“store listing”) required by Section V.3. of the Order. The Manufacturers provided FTI with multiple iterations of the store listing on February 21, 2024, February 28, 2024, March 1, 2024, March 6, 2024, and March 13, 2024, with the final listing consisting of 218,423 Participating Retailer Locations⁴.

The Manufacturers also provided a list of Participating Retailer Locations on military installations.⁵ FTI used this list 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.

On June 24, 2024, the Manufacturers informed FTI that the sales volume data provided in the Audit Period 2 store listing received on March 13, 2024 was incorrect. The Manufacturers provided revised sales volume data on July 2, 2024, which was subsequently updated on July 12, 2024 and August 12, 2024. These revised figures were used to calculate the Representative Sample Noncompliance Rate. The sales volume data revisions impacted 14,426 or 6.6% of the active Participating Retailer Locations in the original March 13, 2024 store listing

¹ Terms discussed throughout the report are defined in *Appendix C. 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 “2024.03.13 Audit Period 2 Store List (updated) - PM, AG, RJRT, ITG-CONFIDENTIAL SUBJECT TO P.O. IN US V PM, ET AL, 99CV2496.xlsx”

⁵ “2024.02.28 Audit Period 2 Store List (updated) - PM, AG, RJRT, ITG-CONFIDENTIAL SUBJECT TO P.O. IN US V PM, ET AL, 99CV2496.xlsx”

and 8.6% of the stores included in Audit Period 2.

Table 1. Revised Sales Volume Impacts Across the Store Listing

Population Affected	Stores with Unchanged Sales Volume	Stores with Revised Sales Volume	Total	Percent Revised
Not in Audit Period 2	197,015	13,769	210,784	6.53%
Audit Period 2	6,982	657	7,639 ⁷	8.60%
Total	203,997	14,426	218,423	6.60%

Additionally, on June 13, 2024, the Manufacturers informed FTI that the previous store listings, including the final Audit Period 2 store listing, contained duplicate records for distinct Participating Retailer Locations. On July 24, 2024, a final list of the duplicate records was provided by the Manufacturers.⁸ These listings included 31 Participating Retailer Locations associated with a consolidation with at least one location in the final In-Person Audit Period 2 population.

As part of the duplicate consolidations, the Manufacturers provided additional revised sales volumes or confirmed the existing volumes on August 12, 2024 for 9 consolidations associated with 18 Participating Retailer Locations⁹. Where updated sales volume data existed only for the TD Linx # being removed as part of the

⁶ The Manufacturers confirmed these assumptions on August 2, 2024.

⁷ The 7,639 Participating Retailer Locations includes the 126 stores that were replaced or excluded in the population (further discussed in the *Overview of Replacement Methodology* section below); 7,513 Participating Retailer Locations were included in the final audit population as a result.

⁸ Multiple iterations of the duplicate records list were delivered between June 13, 2024 and July 24, 2024 with discussions related to additional duplicates and which records to remove or retain during this timeframe. A final set of stores that were initially identified as duplicates were determined to be unique stores by the Manufacturers on August 15, 2024. Further, on August 20, 2024, the Manufacturers sent a list of stores requiring new TD Linx # identifiers. This listing indicates that some of the previous store consolidations should be undone. While the August 20 listing could impact some of the totals in this report, it was determined that there would be no impact to the Representative Sample Noncompliance Rate. As such, the report will not be reflective of any changes from this listing.

⁹ FTI prioritized updating data related to Participating Retailer Locations with revised sales volume data that impacted the Representative Sample Noncompliance Rate per the Working Group's guidance. Additional stores were identified that may have incorrect sales volume data due to consolidations; however, the Working Group decided not to perform additional analysis and updates to these records as they did not impact the Representative Sample Noncompliance Rate.

consolidation, this sales volume was assumed to be the correct value for the corresponding TD Linx # surviving the consolidation.¹⁰

Data Validation

FTI performed a data validation exercise on each iteration of the store listing provided by the Manufacturers and reported various data discrepancies as they were identified. These discrepancies were addressed across the multiple store listings provided through March 13, 2024. At the time of receipt, no known data issues remained in the store listing received on March 13, 2024, and FTI utilized this list to proceed with In-Person Audits. As discussed above, the sales volume and duplicate store data issues were not identified until near the end of Audit Period 2 after all In-Person Audits were complete.

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.¹¹

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 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 2 Representative Sample was selected on March 2, 2024.^{12,13} Refer to the In-Person Audit Period 1 Report for details on the Representative Sample selection process.

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



¹¹ See https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf for state-Census Region mapping.

¹² The sales volume is an input in the Representative Sample selection process. As the change in the sales volume data was not communicated until June 24, 2024, the sales volume data in the store listing received on March 1, 2024 was used as the input for the sample selection.

¹³ The number and composition of the Participating Retailer Locations in the store listing impacts the Representative Sample selection process. As the issue with duplicate Participating Retailer Locations in the store listing was not communicated until June 13, 2024, the number and composition of Participating Retailer Locations in the store listing received on March 1, 2024 were used as the inputs for the sample selection.

Table 2. Representative Sample Pool Strata Distribution

Strata	Census Region Name	Number of Selected Retailers	Percent of Selected Sample
Strata 1	Midwest	1,413	23.55%
Strata 2	Northeast	722	12.03%
Strata 3	South	2,887	48.12%
Strata 4	West	978	16.30%
Strata 5	Territory	0	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.”

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.

Suspected Noncompliance Pool Composition

The initial Suspected Noncompliance Pool store listing was created and circulated to the Working Group on March 4, 2024. These stores were approved by the Working Group and added to the Audit Period 2 population on March 6, 2024:

Table 3. Initial Selected Suspected Noncompliance Pool Summary

SNP Category	Number of Retailers
Major Noncompliant Stores from Audit Period 1 ¹⁴	1,524
Tip Line Submissions	4 ¹⁵
Total	1,528

An additional 52 Suspected Noncompliance Pool retailers were added to the final Audit Period 2 population after March 6, 2024, and consisted of the following:

- At the time the Suspected Noncompliance Pool was distributed on March 4, 2024, there were several stores within the appeal window for their Audit Period 1 noncompliance determination. An additional

¹⁴33 stores that were Major Noncompliant in Audit Period 1 were not included in the store listing for Audit Period 2. As such, these stores were not added to the Suspected Noncompliance Pool and were not audited.

¹⁵ Included in these four stores is TD Linx # 0920181 for which a tip was received on March 4, 2024. Due to the timing of the tip’s submission, this store was not included in the transmittal to the Working Group but was added to the audit population on March 6, 2024 with the other approved stores.

28 stores were added into the Suspected Noncompliance Pool on March 26, 2024 as their Audit Period 1 noncompliant findings became Final Determinations of Major Noncompliance.

- As a result of appeals of Noncompliant findings for Audit Period 2, it was determined that two audits in Audit Period 1 were conducted at the wrong Participating Retailer location which had been found to be Major Noncompliant. To correctly associate the Noncompliant findings with the correct Participating Retailer, FTI updated the noncompliant finding to the correct location for Audit Period 1 and added the two stores, fti3500 and 1513413, to the Suspected Noncompliance Pool for Audit Period 2. FTI informed the Working Group of the error and proposed resolution on April 24, 2024. The Working Group approved the approach on April 29, 2024, and the stores were added to the Suspected Noncompliance Pool on May 1, 2024.
- During Audit Period 2, 22 responsive tips were submitted for Participating Retailer Locations not already included in the audit pool.¹⁶ These 22 Participating Retailer Locations were added to the Suspected Noncompliance Pool and audited.

Factoring in the 32 Participating Retailer Locations that were excluded from the final Suspected Noncompliance Pool, as discussed in the *Participating Retailer Location Replacements* section below, the final 1,548 Participating Retailer Locations that were audited as part of the Suspected Noncompliance Pool were composed of the following:

Table 4. Final Selected Suspected Noncompliance Pool Summary

SNP Category	Number of Retailers	Percent of Final SNP
Major Noncompliant Stores from Audit Period 1 ¹⁷	1,522 ¹⁸	98.32%
Tip Line Submissions	26 ¹⁹	1.68%
Total	1,548	100.00%

Suspected Noncompliance Pool Selection

For Audit Period 2, the total number of qualifying Participating Retailer Locations in the Suspected Noncompliance Pool was less than 4,000, and the volume of tips received during the period also did not cause this threshold to be met. Therefore, the Plaintiffs did not need to select the Participating Retailer Locations subject to an In-Person Audit as all stores in the Suspected Noncompliance Pool were included.

¹⁶ One tip was received for a Participating Retailer Location already in the audit population which had been audited prior to receipt of the tip. This location will be included in the Suspected Noncompliance Pool for Audit Period 3 for potential selection into the In-Person Audit population.

¹⁷ TD Linx # 0646094 is included in this category as it was initially found to be Major Noncompliant during Audit Period 1. However, during the appeals process for Audit Period 2, it was discovered that the incorrect store had been audited in both Audit Periods 1 and 2 as the store name and address data were incorrect in the store listing. As a result, the Major Noncompliant finding during Audit Period 1 was retracted, but the store was left in the Audit Period 2 Suspected Noncompliance Pool for a revisit to be conducted at the correct location.

¹⁸ The final 1,522 Major Noncompliant Stores from Audit Period 1 were comprised of the initial 1,524 added on March 6, 2024, plus the additional 28 added on March 26, 2024 and the 2 added on May 1, 2024, less the 32 excluded throughout the period for meeting replacement criteria.

¹⁹ The final 26 Tip Line Submissions were composed of the 4 tips added on March 6, 2024, plus the 22 tips received during Audit Period 2 through June 2, 2024. None of the Tip Line Submission Participating Retailer Locations were excluded due to meeting replacement criteria.

Participating Retailer Location Replacements

Overview of Replacement Methodology

FTI replaced 94 Participating Retailer Locations initially selected as part of the Representative Sample population. Refer to the In-Person Audit Period 1 Report for details on the replacement methodology for Representative Sample Pool selections.²⁰

As the Suspected Noncompliance Pool had fewer than 4,000 Participating Retailer Locations and no alternates were available, the Working Group agreed on March 8, 2024 that no replacements would be selected for this population. If a Participating Retailer Location from the Suspected Noncompliance Pool met one or more of the replacement criteria, the store was excluded from the final In-Person Audit Period 2 population with no replacement store added.

Replacement Population

Participating Retailer Locations in the Representative Sample population 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 61 or 64.9% of 94 total replacements. Of these stores, 7 or 11.5% of the 61 were flagged as temporarily closed by the Manufacturers.²¹ 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 26 or 27.7% of replacements.
3. The Participating Retailer Location was in a restricted area that FTI was unable to access to complete the In-Person Audit, accounting for 4 or 4.3% of replacements. This included military installations for which access requirements could not be determined despite multiple attempts to contact the installation.
4. For 3 or 3.2% 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 conduct advance outreach).

Participating Retailer Locations selected from the Suspected Noncompliance Pool were excluded from the final In-Person Audit Period 2 population based on circumstances preventing FTI from conducting an In-Person Audit. A summary of the exclusion 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 15 or 46.9% of 32 total exclusions. Of these stores, 1 or 6.7% of the 15

²⁰ The sales volume is an input in the Representative Sample replacement methodology. As the change in the sales volume data was not communicated until June 24, 2024, the sales volume data in the store listing received on March 13, 2024 was used as the input for the Representative Sample replacement process.

²¹ "2024.02.28 Audit Period 2 Store List (updated) - PM, AG, RJRT, ITG-CONFIDENTIAL SUBJECT TO P.O. IN US V PM, ET AL, 99CV2496.xlsx" contained a tab listing the temporarily closed stores.

was flagged as temporarily closed by the Manufacturers.²² 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 13 or 40.6% of replacements.
3. For 3 or 9.4% of the exclusions, the incorrect Participating Retailer Location was visited during Audit Period 1 and found as Major Noncompliant which resulted in the locations' inclusion in the Audit Period 2 Suspected Noncompliance Pool. These stores were excluded as they should not have been in the Audit Period 2 audit population.
4. Upon arriving at one Participating Retailer Location, the In-Person Auditor determined it was not safe to conduct the audit based on their on-site observations. This constituted 3.1% of the exclusions.

A list of replaced and excluded Participating Retailer Locations and reasons can be found in *Exhibit 1. Schedule of Participating Retailer Location Replacements and Exclusions*.

Final Participating Retailer Location Population

Overview of Population

Following replacements and exclusions, the final population of Participating Retailer Locations subject to an In-Person Audit during Audit Period 2 consisted of 5,965 Participating Retailer Locations from the Representative Sample Pool, 1,513 Participating Retailer Locations from the Suspected Noncompliance Pool, and 35 Participating Retailer Locations from both pools. A total of 7,513 Participating Retailer Locations were visited and assigned a Final Determination.

Scope of In-Person Audits

The final audit population was split across two Census Tract designations: Not in a Qualifying Census Tract and Qualifying Census Tract. No stores were located in Puerto Rico.

Table 5. Final Audit Population by Census Tract Designation

Designation	Number of Retailers	Percent of Final Population
Not in a Qualifying Census Tract	6,629	88.23%
Qualifying Census Tract	884	11.77%
Puerto Rico	0	0.00%
Total	7,513	100.00%

The audit population was distributed across the United States with audits conducted in all 50 states and the District of Columbia. Most of the In-Person Audits occurred in the South (Strata 3), accounting for 48.3% of the audit population. Additionally, there were no Participating Retailer Locations in Strata 5 (U.S. territories).

²² "2024.02.28 Audit Period 2 Store List (updated) - PM, AG, RJRT, ITG-CONFIDENTIAL SUBJECT TO P.O. IN US V PM, ET AL, 99CV2496.xlsx" contained a tab listing the temporarily closed stores.

Table 6. Final Audit Population Strata Summary

Strata	Census Region Name	Number of Retailers	Percent of Final Population
Strata 1	Midwest	1,757	23.39%
Strata 2	Northeast	892	11.87%
Strata 3	South	3,631	48.33%
Strata 4	West	1,233	16.41%
Strata 5	Territory	0	0.00%
Total		7,513	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 32.2% 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. Three of the bottom locations were Saipan, Guam, and Puerto Rico, none of which were selected in the final Audit Period 2 population.

Table 7. Final Audit Population Top Five and Bottom Five States/Territories

State/Territory	Number of Retailers	Percent of Final Population	Percent of Store Listing
Texas	801	10.66%	9.93%
California	589	7.84%	7.26%
Florida	464	6.18%	6.12%
North Carolina	353	4.70%	4.49%
Georgia	334	4.45%	4.44%
Alaska	7	0.09%	0.14%
District of Columbia	5	0.07%	0.06%
Guam	0	0.00%	0.00%
Puerto Rico	0	0.00%	0.01%
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 FTI's audit submission platform, the POS Signage Compliance Portal, (iii) transfer of data to the Master Photo Database (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).

FTI conducted several additional tasks to prepare for and execute the In-Person Audits:

- **In-Person Audit Location Validation:** Analyzed store names and addresses for all locations in the audit population to ensure auditors could navigate to the correct location.
- **Military Installation Outreach:** Conducted advanced communication with military bases to understand access requirements necessary to audit stores located on military installations.

- **Route Optimization:** Clustered stores and utilized routing software to increase efficiency when traveling to audit stores in different regions.
- **Data Collection:** Captured specific data points from auditors during each store visit to aid the Photo Review Team with assessing compliance.
- **Compliance Assessments:** Ran a multi-level review of the store photos and data to assess compliance and incorporated data consistency checks to identify potential issues with reviewer coding.

Please refer to the In-Person Audit Period 1 Report for more detailed information on each of these workstreams.

Issued Noncompliance Notifications

FTI developed an In-Person Noncompliance Notice template, which was distributed to the Working Group on January 24, 2024. Edits were made to the notice by the Working Group and the template was approved on February 6, 2024. 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 1,654 In-Person Noncompliance Notices, 103 of which required physical mailing.

In-Person Noncompliance Notice Appeals

Overview of Appeals Process

Please refer to the In-Person Audit Period 1 Report for details on the appeals process. 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 346²³ appeals for 320 distinct Participating Retailer Locations related to the 1,654 In-Person Noncompliance Notices sent by FTI.²⁴ 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; none were appealed to the Court during Audit Period 2.

Table 8. Working Group Appeal Decisions Summary

Working Group Appeal Decision	Number of Retailers	Percent of Retailers
Auditor's Determination Overturned	18	5.20%

²³ 366 appeal decisions were received from the Working Group; however, 20 appeals were retracted due to Working Group appeal decision clarifications.

²⁴ For some Participating Retailer Locations, multiple appeals were submitted.

Working Group Appeal Decision	Number of Retailers	Percent of Retailers
Auditor's Determination Overturned (V.7.j.) ²⁵	36	10.40%
Non-Appeal Response	119	34.39%
Auditor's Determination Affirmed Final	16	4.62%
Auditor's Determination Modified	11	3.18%
Auditor's Determination Affirmed Appealable to Adjudicator	144	41.62%
Appeal Submitted Past Deadline	2	0.58%
Total	346	100.00%

Excluding the count of Non-Appeal Responses (119) and Appeals Submitted Past Deadline (2), Table 9 below summarizes the Final Determinations for Participating Retailer Locations that had an appeal reviewed. The Final Determination accounts for any Adjudicator decisions for the Participating Retailer Location, if applicable.

Table 9. Summary of Final Determinations Based on Appeals

Auditor Determination Status	Final Determination Status	Number of Retailers	Percent of Retailers
Major Noncompliant	Compliant	47	20.89%
Major Noncompliant	Major Noncompliant	140	62.22%
Major Noncompliant	Minor Noncompliant	10	4.44%
Major Noncompliant	Store Replaced	6	2.67%
Minor Noncompliant	Compliant	6	2.67%
Minor Noncompliant	Minor Noncompliant	16	7.11%
Total		225	100.00%

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 Auditors. FTI disseminated guidance to the Photo Review Team and/or In-Person Auditors based on the information gleaned through this process to limit 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, on April 9, 2024, the Working Group informed FTI that Participating Retailer Locations that posted a large Corrective-Statement Sign instead of a required Small Corrective Statement Sign should not be found in noncompliance solely due to the larger sign size. The relevant placement and language requirements for the sign would still be assessed for compliance. FTI updated guidance, disseminated it to the team, and developed validations to ensure these circumstances would not be flagged as Minor Noncompliant going forward.

²⁵ 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, but rather the Participating Retailer Location did not receive Corrective-Statement Sign(s) from a Manufacturer at all, received an insufficient number of signs 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.

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 year. 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.

Additionally, per Section V.5.b. of the Order, once the limit of the audit sample set is reached or when there are less than four weeks remaining in the then current Audit Period, whichever occurs first, a Participating Retailer Location identified through the Tip Line shall be added to the list of Participating Retailer Locations eligible to be selected by Plaintiffs for an In-Person Audit from the Suspected Noncompliance Pool for the next Audit Period. As the limit of the audit sample set was not reached for Audit Period 2, any tip received after June 2, 2024 will be added to the Audit Period 3 Suspected Noncompliance Pool.

Tip Line Results and Noticing

Table 10. Summary of Submitted Tips through June 30, 2024²⁶

Tip Category	Total	Unable to Map Tip to a Participating Retailer	Responsive	Non-Responsive	Noticed	Previously Noticed
Audit Period 1 – October 1, 2023 through February 17, 2024						
Website	12	0	12	0	10	2
Text Line	3	3	0	0	0	0
Audit Period 2 – February 18, 2024 through June 30, 2024						
Website	102	0	40	62	40	0
Text Line	13	10	3	0	3	0

Of the 43 “Responsive” tips received during Audit Period 2, all resulted in a notification sent to the relevant Participating Retailer Location.

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

During Audit Period 1, FTI received two text message tips with no retailer address and no description of noncompliance. During Audit Period 2, these tips were identified as having not been included in previous monthly reports. As there was no actionable data associated with these tips, they were not added to the Suspected Noncompliance Pool but have been included in the summary above.

²⁶ In Audit Period 1, there were two Participating Retailer Locations which each received two Responsive tips. This table tabulates all Responsive tips, even if they were for the same Participating Retailer Location.

Tip Line Stores in Suspected Noncompliance Pool

Of the 53²⁷ stores identified through the Tip Line as suspected of noncompliance:

- Seven stores were previously added to the Audit Period 1 Suspected Noncompliance Pool and audited.
- Three stores were identified through the Tip Line during Audit Period 1 after the Suspected Noncompliance Pool had reached 4,000 stores. These were added to the Suspected Noncompliance Pool for Audit Period 2 and were audited.
- 23 stores were identified through the Tip Line during Audit Period 2 and were added to the Suspected Noncompliance Pool for Audit Period 2 and were audited.
- One store was identified through the Tip Line during Audit Period 2 that had an In-Person Audit conducted during the same period prior to receipt of the tip. A warning notice was sent to this store, and it will be added to the Suspected Noncompliance Pool for Audit Period 3 for potential selection for an In-Person Audit.
- 19 stores were identified through the Tip Line during the last 4 weeks²⁸ of Audit Period 2 and will be added to the Suspected Noncompliance Pool for Audit Period 3 eligible to be selected by Plaintiffs for an In-Person Audit.

Table 11. 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
2381975, 0328506, 3905205, 0860328, 1697814, 0683706, 3946028, 1642869, 7412344, 0790850, 0916597, 1851289, 0967901, 7881809, 0621431, 1530487, 0671499, 0695051, 7458245, 0388483, 7854635, 0638692, 0546537, 7803797, 0920181, 7932006	26	Audit 2
1624641, 7683983, 7913239, 3099921, 0968714, 0564362, 0075767, 0269376, 0324253, 7685301, 1430233, 1534495, 7596275, 1446850, 1534512, 4028749, 1613809, 0695873, 1677475, 0749520	20	Audit 3 ²⁹

²⁷ This number represents the distinct number of Participating Retailer Locations which received Responsive tips; there were two sets of duplicate tips which results in the 55 total Responsive tips in Table 10.

²⁸ Per Section V.5.b. of the Order, when there are less than four weeks remaining in the current Audit Period a Participating Retailer Location identified through the Tip Line shall be added to the list of Participating Retailer Locations eligible to be selected by Plaintiffs for an In-Person Audit from the Suspected Noncompliance Pool for the next Audit Period. FTI determined the last day to accept tips for inclusion in the Audit 2 Suspected Noncompliance Pool and In-Person Audits was June 2, 2024.

²⁹ All "Responsive" tips received after June 30, 2024 will be added to the Audit 3 Suspected Noncompliance Pool, assuming the associated Participating Retailer Location is in the store listing for Audit Period 3.

Result of In-Person Audits

Overview of Compliance Findings

As discussed in the *Final Participating Retailer Location Population* section, 7,513 stores were subject to In-Person Audits. After accounting for appeal modifications or overturns of the Auditor's initial compliance determinations, FTI determined that 5,966 or 79.4% of Participating Retailer Locations met the compliance requirements set forth in the Order for Audit Period 2. The remaining 1,547 or 20.6% of Participating Retailer Locations received a Final Determination of Noncompliance for Audit Period 2 (the "Noncompliant Retailers"). Of the Noncompliant Retailers, 984 or 63.6% were determined to have at least one instance of Major Noncompliance.

Table 12. Final Compliance Determinations by Retailer Sample Pool Type

Pool Type	Compliant	Major Noncompliant	Minor Noncompliant	Total
Representative Sample Pool	4,928	730	307	5,965
Suspected Noncompliance Pool	1,016	246	251	1,513
Both Pools	22	8	5	35
Total	5,966	984³⁰	563	7,513

Based on the Final Determinations, 726³¹ Participating Retailer Locations received a Final Determination of Major Noncompliance for the first time in Audit Period 2 and, therefore, 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. 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 exception did not apply to any Participating Retailer Locations in Audit Period 2.

As of August 19, 2024, FTI received photographs of penalty signs for 697 or 96.01% of the Participating Retailer Locations which received a Final Determination of Major Noncompliance for the first time in Audit Period 2 and were not exempted from placement. While FTI ingested the penalty sign data into the MPD and tracked receipt of these submissions, the photographs were not reviewed for compliance.³² The penalty sign placement for applicable Participating Retailer Locations will be assessed for compliance in Audit Period 3 to the extent the store is selected for an In-Person Audit. FTI has not sent any notices for failure to submit proof of penalty sign

³⁰ The 738 Major Noncompliant stores in the Representative Sample Pool excludes the 29 stores where Section V.7.j. of the Order was applied – a total of 767 stores were determined to be Major Noncompliant in Audit Period 2 for purposes of the Representative Sample Noncompliance Rate calculation.

³¹ The Manufacturers have identified 10 stores with a first Final Determination of Major Noncompliance which are no longer under contract or are closed and, therefore, do not require a penalty sign. An additional five stores are no longer under contract or are closed based on the Rotation Period store list and, therefore, do not required a penalty sign. Three stores (TD Linx # 1418317, 7481653, and 7603000) had a Final Determination of Major Noncompliance in both Audit Period 1 and Audit Period 2, however, there was a change in ownership between the audit periods, so the Major Noncompliance in Audit Period 2 was treated as the first instance for the new owners.

³² FTI recorded the Corrective Statements on the Penalty Signs to include in the list of prior Corrective Statements used in a Participating Retailer Location that cannot be used again during and after the Rotation Period.

placement during Audit Period 2.³³ 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*.

Based on the Final Determinations, 241³⁴ Participating Retailer Locations received a Final Determination of Major Noncompliance for the second time and must either make payments to or have payments withheld from each Manufacturer with which it is contracted totaling any Price Promotion for Covered Brands for a period of four weeks, pursuant to Section VI.2.b. of the Order.

As of August 19, 2024, FTI received proof of penalty payment for 241 or 100% of the Participating Retailer Locations subject to the requirement. While FTI ingested the penalty payment data and tracked receipt of these submissions, the payment deadlines were not reviewed for compliance. FTI has not sent any notices for failure to submit proof of penalty payment during Audit Period 2.³⁵ The detailed schedule of final compliance decisions and penalty payments for each Participating Retailer Location may be found in *Exhibit 2. Schedule of Compliance Decisions for Participating Retailer Locations*.

Representative Sample Noncompliance Rate Input Observations

As discussed in the *Source Data and Data Validation Procedures* section, the Manufacturers informed FTI on June 24, 2024 that the sales volumes provided in the store listing was incorrect and on June 13, 2024 there were duplicate records in the store listing. Both of these items were communicated to FTI after the completion of all In-person Audits for Audit Period 2. The revised sales volume list and the consolidations due to duplicate records affected the sales volume for 432 of the 6,000 Representative Sample stores in the In-Person Audit population.

Table 13. Summary of Revised Sales Volume Impacts to the Representative Sample Population

Final Determination of Compliance	Store Count	Total Original Sales Volume	Total Revised Sales Volume	Percent Change
Stores not Audited ³⁶	210,910			-21.46%
Stores Audited (Suspected Noncompliance Pool):				
- Compliant	1,013			-31.38%
- Major Noncompliant	248			-50.95%
- Minor Noncompliant	252			-62.32%
Subtotal SNP:	1,513			-41.97%
Stores Audited (Representative Sample):				
- Compliant	4,917			-19.87%
- Major Noncompliant	767			-56.06%
- Minor Noncompliant	316			-31.48%
Subtotal Representative Sample:	6,000			-27.48%

³³ 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.

³⁴ The Manufacturers have identified two stores with a second Final Determination of Major Noncompliance which are no longer under contract or are closed and, therefore, do not require payment.

³⁵ The Order does not state that the Auditor is required to send notices for failure to submit proof of penalty payments or enforce the Manufacturers' responsibility to provide proof of the payments.

³⁶ The Store Count differs from the Table 1 Total (210,784 stores) as the 126 replaced and excluded stores are included in the Store Count in Table 13.

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

[REDACTED]

[REDACTED]

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]

[REDACTED]

Representative Sample Noncompliance Rate Calculation

FTI calculated the Representative Sample Noncompliance Rate in accordance with the formula defined in Section I.PP. of the Order utilizing both the original and revised sales volumes. Using the sales volume data provided in the original March 13, 2024 store listing, FTI calculated a preliminary Representative Sample Noncompliance Rate of 19.3% for Audit Period 2. Utilizing the same formula with the revised sales volume data provided on July 12, 2024 and August 12, 2024, FTI calculated a final Representative Sample Noncompliance Rate of 11.7% for Audit Period 2. This 7.6% decrease was driven by a 56.1% overall decrease in the total sales volume of the Major Noncompliant stores in the Representative Sample Population compared to a 27.5% overall decrease in the total sales volume of all stores in the Representative Sample Population.

■ [REDACTED]

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

Table 14. Summary of Representative Sample Noncompliance Rate Calculation

Sales Volume Data	Retailer_NC _i X Retailer_sales _i	Retailer_sales _i	Representative Sample Noncompliance Rate
Original			19.32%
Revised (Final Data)			11.71%

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 Implication

Pursuant to Section VI.4. of the Order, should the Representative Sample Noncompliance Rate exceed 15% in any of the first through third Audit Periods, the Manufacturers are obligated to pay the U.S. Treasury a civil penalty. As detailed above, FTI calculated the Representative Sample Noncompliance Rate using the revised sales volume data to be less than 15% for Audit Period 2, and therefore, concluded that the Manufacturers are not subject to the civil penalty discussed in Section VI.4. of the Order as a result of this audit period.

Attestation

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

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



Michelle Herman

Senior Managing Director, FTI Consulting, Inc.

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.
2/21/2024	2024.02.21 Audit Period 2 Store List - PM, AG, RJRT, ITG-CONFIDENTIAL SUBJECT TO P.O. IN US V PM, ET AL, 99CV2496.xlsx	The first combined listing of Participating Retailer Locations pursuant to Section V.3. of the Order (the "store listing") for Audit Period 2.
2/28/2024	2024.02.28 Audit Period 2 Store List (updated) - PM, AG, RJRT, ITG-CONFIDENTIAL SUBJECT TO P.O. IN US V PM, ET AL, 99CV2496.xlsx	<p>The second combined listing of Participating Retailer Locations pursuant to Section V.3. of the Order (the "store listing") for Audit Period 2. Additional tabs in the workbook include:</p> <p>A listing of 86 duplicate Participating Retailer Locations and which records should be removed as duplicates.</p> <p>A listing of 86 Participating Retailer Locations that should be removed from the store listing as they are either duplicates or no longer under contract with one or more of the Manufacturers.</p> <p>A listing of 492 Participating Retailer Locations the Manufacturers flagged as potentially temporarily closed.</p> <p>A listing of 786 Participating Retailer Locations flagged as located on military installations.</p>
3/1/2024	2024.03.01 Audit Period 2 Store List (updated) - PM, AG, RJRT, ITG-CONFIDENTIAL SUBJECT TO P.O. IN US V PM, ET AL, 99CV2496.xlsx	<p>The third combined listing of Participating Retailer Locations pursuant to Section V.3. of the Order (the "store listing") for Audit Period 2. Additional tabs in the workbook include:</p> <p>A listing of 12 Participating Retailer Locations that had their TD Linx # reverted to match a previously used TD Linx # for the location.</p> <p>A listing of 21 Participating Retailer Locations that had been removed from the store listing.</p>
3/4/2024	Initial Suspected Noncompliance Pool_20240304.xlsx	The list of stores subject to inclusion in the Suspected Noncompliance Pool for Audit Period 2 distributed to the Working Group.

Date Provided	Document Name	Document Description
3/6/2024	2024.03.06 Audit Period 2 Store List (updated) - PM, AG, RJRT, ITG-CONFIDENTIAL SUBJECT TO P.O. IN US V PM, ET AL, 99CV2496.xlsx	<p>The fourth combined listing of Participating Retailer Locations pursuant to Section V.3. of the Order (the "store listing") for Audit Period 2. An additional tab in the workbook includes:</p> <p>A listing of 11 Participating Retailer Locations that had been removed from the store listing.</p>
3/13/2024	2024.03.13 Audit Period 2 Store List (updated) - PM, AG, RJRT, ITG-CONFIDENTIAL SUBJECT TO P.O. IN US V PM, ET AL, 99CV2496.xlsx	The fifth and final combined listing of Participating Retailer Locations pursuant to Section V.3. of the Order (the "store listing") for Audit Period 2.
3/13/2024	2024.03.13 Audit Period 2 Store List (updated) - Blank TD Linx.xlsx	In the store listing, FTI identified Participating Retailer Locations that did not have a TD Linx # assigned. FTI assigned unique IDs to these Participating Retailer Locations and the listing of 33 records was provided to the Working Group.
3/15/2024	FTI Audit Period 1 Report - CONFIDENTIAL – 20240315.pdf	The report drafted by FTI detailing the findings and outcomes from In-Person Audit Period 1. This version had sales data included and was shared with the Manufacturers and DOJ.
3/19/2024	FTI Audit Period 1 Report - 20240319 [REDACTED].pdf	The report drafted by FTI detailing the findings and outcomes from In-Person Audit Period 1. This version had the sales data redacted and was shared with the Public Health Intervenors.

Appendix B. Additional Assumptions, Considerations, and Critical Decisions

Throughout the course of Audit Period 1, several assumptions, considerations, and critical decisions were made regarding the sample pool selection, In-Person Audit population and procedures, noncompliance notices, Final Determinations, store location validation, and the Tip Line. These same assumptions, considerations, and critical decisions applied to the execution of Audit Period 2. For more detail on these specific items, please refer to Appendix B of the In-Person Audit Period 1 Report.

Appendix C. Consent Order and Report Definitions

Consent Order Definitions

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

Adjudicator: 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. of the Order; 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.

Auditor: 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.

Corrective-Statement Signs: 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.

Defendant: 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.

Final Determination of Noncompliance: 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.

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

In-person Audit: 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.

In-person Noncompliance Notice: 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 In-person 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.

Kiosk Store: 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.

Major Noncompliance: 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.

Major Noncompliance Notice: 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.

Mediator: 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.

Merchandising Set: 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.

Minor Noncompliance: 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.

Minor Noncompliance Notice: 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.

Off-Set Corrective-Statement Sign: means a Corrective-Statement Sign required because of Off-Set Promotional Signage.

Off-Set Promotional Signage: means Promotional Signage that is not placed within the four corners 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.

Participating Retailer Contract: 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.

Participating Retailer Location: means a Store with respect to which a Manufacturer has a Participating Retailer Contract.

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

Photo Database: 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.

Photo Noncompliance Notice: 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.

POS Corrective Statements: 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 pg. 9.

POS Preamble: 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:".

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

Price Promotion: 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).

Promotional Signage: 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).

Public Health Intervenor: 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.

Qualifying Census Tract: 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.

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

Remedies Party: 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 [(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.

Representative Sample Noncompliance Rate: means the noncompliance rate of the Representative Sample calculated as follows:

$$\frac{\sum_{i=1}^{Total \text{ Sampled retailers}} Retailer_NC_i \times Retailer_sales_i}{\sum_{i=1}^{Total \text{ Sampled retailers}} Retailer_sales_i}$$

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_i" 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.

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

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

Rotation Period: 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.

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

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

Spanish Version: 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.

Suspected Noncompliance Pool: 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.

Tip Line: 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.

Working Group: means a group consisting of ten individuals: three individuals appointed by the Department of Justice, two individuals appointed by the Public Health Intervenor, 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

Alternates: 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.

Appeal Submitted Past Deadline: 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.

Auditor's Determination Affirmed Appealable to Adjudicator: 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.

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

Auditor's Determination Modified: 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.

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

Auditor's Determination Overturned (V.7.j.): 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.

Compliance Assessment/Determination: 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.

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

In-Person Audit Population: 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).

Major Noncompliant Stores from Audit Period 1: means a Participating Retailer Location with a Final Determination of Major Noncompliant as a result of an In-Person Audit during Audit Period 1. One of the Suspected Noncompliance Pool categories qualifying a Participating Retailer Location for inclusion in the Suspected Noncompliance Pool.

Manufacturers' Representatives: 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.

Master Photo Database ("MPD"): 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.

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

Non-Appeal Response: 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.

Noncompliant Retailers: means the group of retailers that had a Final Determination of Noncompliance as a result of an In-Person Audit during Audit Period 2.

Penalty Sign: 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.

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

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

Representative Sample Replacement Methodology: 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.

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

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

Tip Line Submissions: 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.