

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Rebecca Kelly Slaughter, Acting Chair  
Noah Joshua Phillips  
Rohit Chopra  
Christine S. Wilson

File No. P144504

ORDER TO FILE SPECIAL REPORT

Pursuant to a resolution of the Federal Trade Commission dated February 11, 2021, entitled “Resolution Directing Use of Compulsory Process to Collect Information Concerning E-Cigarette Sales, Practices, and Methods of Advertising and Promotion,” a copy of which is enclosed, [Company], hereinafter referred to as the “Company,” is ordered to file with the Commission, not later than May 12, 2021, a Special Report containing the information specified herein.

The Commission is seeking to compile data concerning the sales, practices, and methods of Advertising and promotion of E-Cigarette Products employed throughout the United States during calendar years 2019 and 2020. The Special Report will assist the Commission in conducting a study of such sales and marketing.

You are required to submit a written report and two electronic datafiles. Some of the questions in the written report will require You to summarize information from the datafiles. Therefore, where appropriate, You should ensure that the totals reported in the written report accord with the information in the datafiles.

Your written report is required to be subscribed and sworn to by an official of the Company who has prepared or supervised the preparation of the report from books, records, correspondence, and other data and material in Your possession, custody, or control. E-signatures or wet-ink signatures are acceptable for the certification of accuracy.

Your report should be filed electronically via Accellion. To submit the Report through Accellion, you must email Commission staff at the time you are ready to submit the Report and request a link for the submission. Alternatively, if you are not able or prefer not to submit through Accellion, You must submit encrypted, password-protected documents to Commission staff through the FTC email system.

You are required to respond to this Order using information in Your possession, custody, or control, including information maintained in a central data repository to which You have access. You should not seek any responsive information and data from separately incorporated subsidiaries or affiliates or from individuals (other than in their capacity as Your employee or as Your agent).

However, You should provide information from separately incorporated subsidiaries or affiliates or from individuals if You already have possession, custody, or control of such information. No later than February 25, 2021, You should contact Commission staff and indicate whether all of the information required to respond to this Order is in Your possession, custody, or control. If certain information is not in Your possession, custody, or control, no later than February 25, 2021, You also must: (1) identify, both orally and in writing, each question or sub-question that You are not able to fully answer because information is not in Your possession, custody, or control, and (2) for each, provide the full names and addresses of all entities or individuals who have possession, custody, or control of such missing information.

Your written report should restate each item of this Order with which the corresponding answer is identified. If any question cannot be answered fully, give such information as is available to You and explain how and why Your answer is incomplete.

Confidential or privileged commercial or financial information will be reported by the Commission on an aggregate or anonymous basis, consistent with Sections 6(f) and 21(d) of the FTC Act, 15 U.S.C. §§ 46(f) and 57b-2(d). Individual submissions responsive to this Order that are marked “Confidential” will not be disclosed without first giving the Company ten days’ notice of the Commission’s intent to do so, except as provided in Sections 6(f) and 21 of the FTC Act.

## **SPECIFICATIONS AND DATATABLES**

Please supply written answers to each of the following requests for information, consistent with the definitions contained in Attachment A.

1. State the full name, business address, and official capacity of the subscriber to the Company’s report.
2. State the Company’s full name, its official address, and its date and state of incorporation.
3. Describe the Company’s corporate structure, and state the names of all parents, subsidiaries, divisions, branches, joint ventures, and operations under assumed names. For each such business entity, provide its full name and address. If such entity had any involvement in the manufacturing, labeling, Advertising, promotion, marketing, development, offering for sale, sale, or distribution of E-Cigarette Products during calendar years 2019 or 2020, provide a brief description of the involvement.
4. Separately, for each calendar year 2019 and 2020, identify the brand name and any sub-brand name, and product descriptors, of each different E-Cigarette Product that the Company Sold or Gave Away in the United States.
5. Separately, for each calendar year 2019 and 2020, provide the following information for Disposable E-Cigarettes Products Sold or Given Away in the United States by the Company. Include both sales and Give-Aways made directly to consumers (*e.g.*, online or at company-sponsored events) and those made to wholesalers and retailers. For subparts A, C, and D, count each individual unit (*e.g.*, if three Disposable E-Cigarette Products are packaged together, they

should be counted and reported as three E-Cigarette Products, not one).

- A. The Net Number of Disposable E-Cigarette Products sold;
- B. The Net Sales Revenues from Disposable E-Cigarette Products (*i.e.*, Net Sales Revenue from disposable devices and the e-liquids for said devices);
- C. The Net Number of Disposable E-Cigarette Products Sold at a Price of \$1.00 or Less; and
- D. The Net Number of Disposable E-Cigarette Products Given Away.

6. Separately, for each calendar year 2019 and 2020, provide the following information for Closed-System Rechargeable E-Cigarette Products Sold or Given Away in the United States by the Company. Include both sales and Give-Aways directly to consumers (*e.g.*, online or at company-sponsored events) and to wholesalers and retailers. Count each individual unit (*e.g.*, if two E-Cigarette Devices and six E-Cigarette Cartridges are packaged together for sale to consumers, they should be counted and reported as two E-Cigarette Devices and six E-Cigarette Cartridges, not as one unit):

- A. The Net Number of Closed-System Rechargeable E-Cigarette Devices sold;
- B. The Net Number of E-Cigarette Cartridges sold;<sup>1</sup>
- C. The Net Sales Revenues from Closed-System Rechargeable E-Cigarette Products;
- D. The Net Number of Closed-System Rechargeable E-Cigarette Devices Given Away;
- E. The Net Number of E-Cigarette Cartridges Given Away;
- F. The Net Number of Closed System Rechargeable E-Cigarette Devices Sold at a Price of \$1.00 or Less; and
- G. The Net Number of E-Cigarette Cartridges Sold at a Price of \$1 or Less for use with Closed System Rechargeable E-Cigarette Devices.

7. Separately, for each calendar year 2019 and 2020, provide the following information for Open-System E-Cigarette Products (*i.e.*, those using tanks that are manually filled from an E-Liquid Bottle) Sold or Given Away in the United States by the Company.<sup>2</sup> Include both sales

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<sup>1</sup> Report the total of all E-Cigarette Cartridges included as part of the purchase or Give-Away of a Closed System Rechargeable E-Cigarette Device, as well as all E-Cigarette Cartridges sold or Given Away separately from an E-Cigarette Device.

<sup>2</sup> Report the total of all manual-fill E-Liquid Bottles included as part of the purchase or Give-Away of an E-Cigarette Device, as well as all manual-fill E-Liquid Bottles sold or Given Away

and Give-Aways made directly to consumers (*e.g.*, online or at company-sponsored events) and those to wholesalers and retailers. Count each individual unit (*e.g.*, if one E-Cigarette Device and three E-Liquid Bottles are packaged together for sale to consumers, they should be counted and reported as one E-Cigarette Device and three E-Liquid Bottles, not as one unit):

- A. The Net Number of Open-System Rechargeable E-Cigarette Devices sold;
- B. The Net Number of E-Liquid Bottles sold;
- C. The Net Sales Revenues from Open-System E-Cigarette Products;
- D. The Net Number of Open-System Rechargeable E-Cigarette Devices Given Away;
- E. The Net Number of E-Liquid Bottles Given Away;
- F. The Net Number of Open System Rechargeable E-Cigarette Devices Sold at a Price of \$1.00 or Less; and
- G. The Net Number of E-Liquid Bottles Sold at a Price of \$1 or Less.

8. Separately, for each calendar year 2019 and 2020, report the dollar amounts expended by the Company on the Advertising or Promotion in the United States of E-Cigarette Products in each category specified in items 4 through 34 of Datafile No. 2. For each expenditure category, report a single annual total representing the sum of all brand spending and any non-brand specific expenditures on that type of Advertising or promotion during the calendar year.

9. Separately, for each calendar year, 2019 and 2020:

- A. State whether the Company or any other persons working for or on behalf of the Company paid any money or compensation, or made any other contribution (including, but not limited to, goods or services, *e.g.*, free E-Cigarette Products) in connection with the appearance of any E-Cigarette Product or any E-Cigarette Product brand imagery in the creative content of any motion picture, television show, video game, magazine, or other publication. If so, please identify each motion picture, television show, video game, magazine, and other publication in which any of the Company's E-Cigarette Products or E-Cigarette Product brand imagery appeared, and for each, state the nature and amount of each payment or contribution;
- B. State whether the Company or any other persons working for or on behalf of the Company paid any money or compensation, or made any other contribution (including, but not limited to, goods or services, *e.g.*, free E-Cigarette Products) to any individual, partnership, or corporation engaged in the business of product

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separately from an E-Cigarette Device.

placement in motion pictures, television shows, video games, magazines, or other publications. If so, please identify the person who made the contribution; the recipient of the payment or contribution; the name of each motion picture, television show, video game, magazine, and other publication in which any of the Company's E-Cigarette Products or E-Cigarette Product brand imagery appeared, and for each, state the nature and amount of each payment or contribution;

- C. State whether the Company or any other persons working for or on behalf of the Company sought or solicited, the appearance of any E-Cigarette Product or any E-Cigarette Product brand imagery in the creative content of any motion picture, television show, video game, magazine or other publication. If so, please identify each motion picture, television show, video game, magazine, and other publication; and
- D. State whether the Company or any other persons working for or on behalf of the Company granted approval or otherwise gave permission for the appearance of any E-Cigarette Product or any E-Cigarette Product brand imagery in the creative content of any motion picture, television show, video game, or magazine, or other publication. If so, please identify each motion picture, television show, video game, magazine, and other publication.

10. Separately, for each calendar year 2019 and 2020, report the dollar amount expended by the Company on advertisements that were directed to persons located in the United States under the Legal Age or their parents that were intended to prevent or reduce E-Cigarette Product use by those under the Legal Age.

11. Separately, for each calendar year 2019 and 2020, identify by name and URL each website owned or operated by the Company or its agents that was directed to persons located in the United States and used to Advertise or sell E-Cigarette Products. For each website identified, provide separately, for each calendar year 2019 and 2020, the following information:

- A. State whether the Company uses any mechanism other than or in addition to self-certification to deter entry onto the website by persons under the Legal Age. If yes, describe such mechanism, and state the date(s) such mechanism(s) were instituted;
- B. State whether the Company uses any mechanism other than or in addition to self-certification to deter entry onto the Company's mailing list or loyalty program by persons under the Legal Age. If yes, describe such mechanism and state the date(s) such mechanism(s) were instituted;
- C. Describe the mechanism(s), if any, used to deter the purchase of E-Cigarette Products by persons under the Legal Age, including the specific demographic characteristics required to match a potential purchaser's identity, and the date(s) such mechanism(s) were instituted; and
- D. Describe the circumstances under which the Company required adult signature as a

condition for delivery to deter the delivery of any E-Cigarette Product purchased on a Company website to persons under the Legal Age.

12. Separately, for each calendar year 2019 and 2020, identify each social media account or channel maintained to Advertise, promote, or sell any E-Cigarette Product to persons in the United States by the Company or its agents. For each social media account or channel identified, provide the following information:

- A. Describe in detail the specific mechanism(s), if any, used to deter following, subscribing to, or visiting the social media account by persons under the Legal Age, and the date(s) such mechanism(s) were instituted;
- B. State the circumstances under which the Company permitted members of the public to link their social media accounts to the Company's social media accounts or channels, and state any benefits consumers received for linking to or "liking" the Company's accounts;
- C. Describe the Company's methods for monitoring or reviewing user generated comments on each of its social media platforms; and
- D. Describe the Company's methods for monitoring or reviewing any references to the Company's E-Cigarette Products appearing on social media platforms or channels that the Company does not maintain.

13. Separately, for each calendar year 2019 and 2020, state whether the Company maintained or operated an affiliate program to market its E-Cigarette Products to persons located in the United States. If the Company did so, provide separately, for each calendar year 2019 and 2020, the following information:

- A. Describe the Company's policies, practices, and procedures regarding the review and approval of persons applying to join or enroll in the program as affiliates; and
- B. Describe the Company's policies, practices, and procedures for monitoring the Advertising and promotional activities undertaken by affiliates.

14. Separately, for each calendar year 2019 and 2020, state whether the Company maintained or operated any marketing program that utilized celebrities, social media influencers, or other Endorsers (collectively "influencers") to promote its E-Cigarette Products to persons located in the United States. If the Company did so, provide separately, for each calendar year 2019 and 2020, the following information:

- A. Describe the nature of each such program;
- B. Describe the Company's policies, practices, and procedures regarding the identification and selection of potential influencers;

- C. State the total cost of all compensation, monetary or otherwise, provided by the Company or its agents to influencers, and all costs associated with implementing the company's influencer program(s), including, but not limited to, costs to identify and select potential influencers, or to create content for the celebrity, social media influencer, or other Endorser;
- D. Describe how the Company monitored the Advertising and promotional activities undertaken by its influencers; and
- E. State the number of Company employees whose job responsibilities, in whole or in part, included any influencer program.

15. Separately, for each calendar year 2019 and 2020, state whether the Company or any of its agents, maintained or operated any college campus program(s), including, but not limited to, the use of brand ambassadors, campus representatives, sampling events, or other events or promotions, whether or not the event or promotion was held on campus or off campus. If the Company did so, provide separately, for each calendar year 2019 and 2020, the following information:

- A. State the total cost of all compensation, monetary or otherwise, provided to campus representatives or brand ambassadors, costs to organize, Advertise, promote, or conduct events or promotions (regardless of whether the event or promotion took place on campus or off campus), and costs to implement the campus programs;
- B. Describe in detail such program(s), including the roles and responsibilities of any brand ambassadors or campus representatives, the nature and extent of sampling events (regardless of whether the event or promotion took place on campus or off campus), and the specific types and natures of other promotions sponsored through this program (regardless of whether the event or promotion took place on campus or off campus);
- C. Describe in detail the mechanism(s) used, if any, to monitor such program(s) to ensure that persons under the Legal Age did not receive or sample any E-Cigarette Product, and the date(s) such practice(s) were instituted; and
- D. State the number of Company employees whose job responsibilities, in whole or in part, included any college campus program.

16. Separately, for each calendar year 2019 and 2020, provide the following information for each E-Cigarette Product for which the form of nicotine is reported in Datafile No. 1 as "Other," rather than as freebase ("FB") or nicotine salts ("S"):

- A. Identify the specific form of nicotine used in the product; and
- B. Explain why and how that nicotine form differs from freebase nicotine and/or from nicotine salt.

## **THE E-CIGARETTE REPORT DATAFILES**

This Order requests that the Company produce data in two separate datafiles. Datafile No. 1 is to be used for information about E-Cigarette Product sales and Give-Aways. Data on Advertising and promotional expenditures for E-Cigarette Products are to be reported in Datafile No. 2. The instructions below provide detailed information on how to complete each datafile.

The Company is to produce the information in Datafiles No. 1 and 2 in spreadsheet format (readable by Microsoft Excel).

The Order requires information about sales and expenditures for calendar years 2019 and 2020. Entries for each calendar year should be reported on separate spreadsheet tabs.

### **DATAFILE NO. 1**

#### INSTRUCTIONS FOR COMPLETING DATAFILE NO. 1

1. Sales data and certain other information are to be reported in Datafile No. 1 separately for each E-Cigarette Product Sold or Given Away in the United States with a different UPC code.
2. Unless otherwise specified, sales, other than sales of E-Cigarette Products Sold at a Price of \$1.00 or Less that were made directly to consumers (*e.g.*, online sales transacted on a Company website) must be reported separately from indirect sales (*i.e.*, sales to wholesalers and retailers).
3. Unless otherwise specified, units sold and sales revenues from the sales of E-Cigarette Products Sold at a Price of \$1 or Less must be reported separately by UPC Code and should not be included in UNITSSOLD-DIRECT, UNITSSOLD-INDIRECT, SALES-DIRECT, or SALES-INDIRECT. Such sales should be included in TOTAL-DEV, TOTAL-ELIQUIDS, and TOTAL-ELIQUID-VOL.
4. If an item pre-filled with individual E-Cigarette Products, such as a display case, is not sold to consumers as a unit but instead the products within the item are sold separately to consumers, each with its own UPC code, report the individual products using the UPC codes for those individual E-Cigarette Products and not the UPC code for the item containing those individual products.

#### FIELD DEFINITIONS FOR DATAFILE NO. 1

Datafile No. 1 contains twenty-two fields of data. The first three fields provide information identifying the year, the Company submitting the datafile, and the specific E-Cigarette Product.

Please note the field names (in CAPS) cited below and use them as written in the Company's submission.

1. YEAR (Year): Numeric field. Refers to the calendar year for which information is being reported. Enter as "20XX."

2. COMPCODE (Company Code): Character Field. Enter the letter assigned for the Company:

[Company]

[letter A to F]

3. UPC-CODE: Numeric field. Enter the industry standard bar-code value assigned to the product as printed on the product package.

The next eleven fields include information about the brand name and certain characteristics of the product. Please enter all letters that appear in alpha-numeric character fields using only capital letters.

4. BRAND-NAME (Brand Name): Character field. Refers to the brand, and sub-brand, if any, identified on the product package. For example, if the Company sells a Disposable E-Cigarette Product under the name "ECigarette Alpha" and a Closed-System Rechargeable E-Cigarette Product under the name "ECigarette Beta," the brand name reported for both products should be "ECigarette" and the sub-brand name reported should be "Alpha" for the Disposable E-Cigarette Product and "Beta" for the Closed-System Rechargeable E-Cigarette Product.

5. PROD-CAT (Product Category of the type of E-Cigarette Product sold): Character Field. Enter "D" for Disposable E-Cigarette Product, "C" for a Closed-System Rechargeable E-Cigarette Product, and "O" for Open-System E-Cigarette Product. If the product is an e-liquid for a Closed-System Rechargeable E-Cigarette Product or an Open System E-Cigarette Product, enter the product category for which the product is used. For example, if a Closed-System Rechargeable E-Cigarette device and three E-Cigarette Cartridges are packaged together for sale to consumers, report the letter "C." Similarly, if three E-Cigarette Cartridges are packaged together for sale to consumers, report the letter "C."

6. NUM-DEVICES (Number of Devices): Numeric field. Enter the number of E-Cigarette Devices packaged together as part of the UPC Unit. For example, if two E-Cigarette Devices and six E-Cigarette Cartridges are packaged together for sale to consumers, report the number "2."

7. NUM-ELIQUIDS (Number of E-Liquids): Numeric field. Enter the number of e-liquid products packaged together as part of the UPC Unit. For example, if two E-Cigarette Devices and six E-Cigarette Cartridges are packaged together for sale to consumers, report the number "6."

8. ECIG-FLAVORS (Marketing description of flavoring): Character field. Report the marketing description of the E-Cigarette Product's flavor. If multiple flavors are packaged together for sale to consumers, provide the marketing descriptions for each flavor separated by commas, making clear how many items there are with each flavor. For example, if one E-Cigarette Device and four E-Cigarette Cartridges are packaged together for sale to consumers

and the two E-Cigarette Cartridges are tobacco flavored and two are mint flavored, report “tobacco, tobacco, mint, mint.” If the product is sold empty of any e-liquid product, report “NONE.”

9. FLAVOR-CAT (Flavor Category): Character Field. Enter “T” for tobacco, “MEN” for menthol, “MIN” for mint, and “O” for other flavoring. If multiple flavors are packaged together for sale to consumers, report the flavor categories of each e-liquid product, separated by commas. For example, if one E-Cigarette Device and six E-Cigarette Cartridges are packaged together for sale to consumers and the flavors of the E-Cigarette Cartridges are tobacco, tobacco, mint, berry, cucumber, nectar, report “T, T, MIN, O, O, O, O.”

10. NIC-CONCEN (Nicotine concentration as measured in milligrams per milliliter): Numeric field. Enter the nicotine concentration of the e-liquid for the E-Cigarette Product as measured in milligrams per milliliter. If the product is a Closed-System Rechargeable E-Cigarette Device sold without any E-Cigarette Cartridges or an Open-System Rechargeable E-Cigarette Device sold empty of any e-liquid and without any E-liquid Bottles, report “999.”

11. NIC-FORM (Nicotine form): Character Field. Enter the form of the nicotine in the e-liquid contained in the E-Cigarette Product, using “S” for nicotine salts; “FB” for freebase nicotine; “O” for other form of nicotine, and “NF” for e-liquids that do not contain nicotine. If the product is a Closed-System Rechargeable E-Cigarette Device sold without any E-Cigarette Cartridges or an Open-System Rechargeable E-Cigarette Device sold empty of any e-liquid and without any E-Liquid Bottles, report “NONE.”

12. PG/VG-RATIO-PG (PG/VG Ratio – Propylene Glycol): Numeric Field. Enter as a percentage the volume of propylene glycol contained in an E-Cigarette Product divided by the total combined volume of propylene glycol and vegetable glycerin contained in the E-Cigarette Product. For example, if an E-Cigarette Product contains 0.8 milliliters of propylene glycol and 0.2 milliliters of vegetable glycerin, report “80%.” If the product is a Closed-System Rechargeable E-Cigarette Device sold without any E-Cigarette Cartridges or an Open-System Rechargeable E-Cigarette Device sold empty of any e-liquid and without any E-Liquid Bottles, report “999.”

13. PG/VG-RATIO-VG (PG/VG Ratio – Vegetable Glycerin): Numeric Field. Enter as a percentage the volume of vegetable glycerin contained in an E-Cigarette Product divided by the total combined volume of propylene glycol and vegetable glycerin contained in the E-Cigarette Product. For example, if an E-Cigarette Product contains 0.8 milliliters of propylene glycol and 0.2 milliliters of vegetable glycerin, report “20%.” If the product is a Closed-System Rechargeable E-Cigarette Device sold without any E-Cigarette Cartridges or an Open-System Rechargeable E-Cigarette Device sold empty of any e-liquid and without any E-Liquid Bottles, report “999.”

14. VOL-ELIQUID (Volume of E-Liquid per unit). Numeric Field. Enter the liquid volume as measured in milliliters of the e-liquid contained in any single E-Cigarette Product that is sold as part of the UPC Unit. For example, if three Disposable E-Cigarette Products are packaged together for sale to consumers, report the volume of e-liquid for a single Disposable E-Cigarette Product. Similarly, if one E-Cigarette Device and four E-Cigarette Cartridges are packaged together for sale to consumers, report the volume of e-liquid for a single E-Cigarette

Cartridge. If the product is a Closed-System Rechargeable E-Cigarette Device sold without any E-Cigarette Cartridges or an Open-System Rechargeable E-Cigarette Device sold empty of any e-liquid and without any E-Liquid Bottles, report “999.”

The next ten fields are used to record the Net Number of UPC Units that were sold directly to consumers, sold to wholesalers or retailers, Sold at the Price of \$1, and Given Away; the Net Sales Revenues of E-Cigarette Products sold directly to consumers, sold to wholesalers or retailers, and Sold at the Price of \$1; and the Net Number of individual devices and e-liquids distributed.

15. UNITSSOLD-DIRECT (Units sold directly): Numeric field. Report one figure for the Net Number of UPC Units of the E-Cigarette Product that the Company Sold in the United States directly to consumers during the relevant calendar year.

16. UNITSSOLD-INDIRECT (Units sold indirectly): Numeric field. Report one figure for the Net Number of UPC Units of the E-Cigarette Product that the Company Sold in the United States to wholesalers or retailers during the relevant calendar year.

17. UNITSSOLD-\$1 (Units Sold at a Price of \$1.00 or Less): Numeric field. Report one figure for the Net number of UPC units of the E-Cigarette Product that the Company Sold in the United States to consumers, directly or indirectly, that were Sold at a Price of \$1.00 or Less during the relevant calendar year.<sup>3</sup>

18. UNITSGIVEN (Units Given Away): Numeric Field. Report one figure for the Net Number of UPC Units of this E-Cigarette Product that the Company Gave Away in the United States during the relevant calendar year.

19. SALES-DIRECT (Dollar sales for units sold directly): Numeric Field. Report one figure for the Net Sales Revenues of E-Cigarettes Products for this UPC code that the Company Sold in the United States directly to consumers during the relevant calendar year. Do not include revenues from shipping or handling.

20. SALES-INDIRECT (Dollar sales for units sold indirectly): Numeric field. Report one figure for the Net Sales Revenues of E-Cigarettes Products for this UPC code that the Company Sold in the United States to wholesalers or retailers during the relevant calendar year. Do not include revenues from shipping and handling.

21. SALES-\$1 (Dollar sales for units Sold at a Price of \$1 or Less): Numeric Field. Report one figure for the Net Sales Revenues of E-Cigarette Products for this UPC code that the Company Sold in the United States to consumers, directly or indirectly, that were Sold at a Price of \$1.00 or Less

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<sup>3</sup> Unit sales to retailers or wholesalers at \$1 or less that do not meet the definition of Sold at a Price of \$1.00 or Less should be reported in Datafile No. 1 by individual UPC code in UNITSSOLD-INDIRECT. You should report promotional expenditures associated with products Sold at a Price of \$1.00 or Less in Datafile No. 2 in CAT-R-EXP and/or CAT-S-EXP, as appropriate.

during the relevant calendar year. Do not include revenues from shipping and handling.<sup>4</sup>

22. TOTAL-DEV (Total devices): Numeric field. Report one figure for the Net Number of individual E-Cigarette Devices for this UPC code that the Company Sold or Gave Away in the United States during the relevant calendar year. For example, if the UPC Unit consists of two E-Cigarette Devices and six E-Cigarette Cartridges packaged together for sale to consumers, and if 1,000 UPC Units were Sold or Given Away, report the number “2000.”

23. TOTAL-ELIQUIDS (Total E-Liquids): Numeric Field. Report one figure for the Net Number of individual E-Cigarette Cartridges or E-Liquid Bottles for this UPC code that the Company Sold or Gave Away in the United States during the relevant calendar year. For example, if the UPC Unit consists of two E-Cigarette Devices and six E-Cigarette Cartridges packaged together for sale to consumers, and if 1,000 UPC Units were sold or Given Away, report the number “6000.”

24. TOTAL-ELIQUID-VOL (Total E-Liquid Volume): Numeric Field. Report one figure for the Net e-liquid volume in milliliters contained in all of the E-Cigarette Products for this UPC code that the Company Sold or Gave Away in the United States during the relevant calendar year. For example, if the UPC Unit consists of one E-Cigarette Device and four E-Cigarette Cartridges packaged together for sale to consumers, and if each cartridge contained 1 milliliter of e-liquid, and 1,000 UPC Units were sold or Given Away, report the number “4000.” For Disposable E-Cigarette Products, report the e-liquid volume even if the e-liquid is contained in a single unit with the device.

## **DATAFILE NO. 2**

### **INSTRUCTIONS FOR COMPLETING DATAFILE NO. 2**

1. Data on expenditures for Advertising or Promotion in the United States in each of calendar years 2019 and 2020 are to be reported in Datafile No. 2.
2. Provide expenditures on E-Cigarette Product Advertising or Promotion in the United States only at the brand level rather than by separate UPC code.
3. The Commission also is requesting that expenditures on E-Cigarette Product Advertising or Promotion in the United States that are not attributable to or in connection with any specific brand of E-Cigarettes Products be reported in a “non-brand specific” record. Examples of such expenditures might include Advertising or promoting E-Cigarette Products generally.

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<sup>4</sup> Sales to retailers or wholesalers at \$1 or less should not be reported in this category if the product is reasonably expected to be sold to consumers at a price greater than \$1. Such sales should be reported in Datafile No. 1 by individual SKU in SALES-INDIRECT, and not in the separately created category for products Sold at a Price of \$1.00 or Less. You also should report expenditures associated with products Sold at a Price of \$1 or Less in Datafile No. 2 in CAT-R-EXP and/or CAT-S-EXP, as appropriate]

4. Expenditures on lines 4 through 34 should be included in only one category to the extent practicable. Reportable expenditures (lines 4 through 34) should equal the total on line 35. Such expenditures should not include the costs of employing full-time employees of the Company or any overhead expenses attributable to the activities of such Company employees.

5. To the extent practicable, third-party agency or contract fees relating to E-Cigarette Product Advertising or promotion should be reported in the categories of Advertising or promotion to which those fees relate. For example, agency fees related to point-of-sale Advertising should be reported in Category P and agency fees related to Advertising on any Company website should be reported in Category F. To the extent that third-party agency fees relating to E-Cigarette Product Advertising or promotion cannot be divided based on the materials to which they relate, they should be reported in Category EE.

#### FIELD DEFINITIONS FOR DATAFILE NO. 2

1. YEAR (Year): Numeric field. Refers to the calendar year for which information is being reported. Enter as "20XX."

2. COMPCODE (Company Code): Character field. Enter letter assigned for the Company:

[*Company*]

[*letter A to F*]

3. BRAND-NAME (Brand name): Character Field. Refers to the brand identified on the product package. For example, if the Company sells a Disposable E-Cigarette Product under the name "ECigarette Alpha" and a Closed System Rechargeable E-Cigarette Product under the name "ECigarette Beta," there should be one entry for the "E-Cigarette" brand. For the "Non-brand specific" record, enter the phrase "NON-BRAND SPECIFIC."

4. CAT-A-EXP (Category A Expenditures: TV Advertising): Numeric Field. All expenditures for Advertising on broadcast, cable, and satellite television channels, as well as all expenditures for Internet television and webisode Advertising except, to the extent practicable, expenditures covered by Categories E, G, or I, which should be reported in those categories. Internet and webisode Advertising includes, but is not limited to, television shows broadcast on streaming services (*e.g.*, Hulu, Netflix, Amazon Prime) and webisodes (*e.g.*, web shows on YouTube). This category includes, but is not limited to, spot ads, long-form commercials, and sponsored programming (such as television shows bearing the name of or stated to be sponsored by or underwritten by an e-cigarette brand). Expenditures include, but are not limited to, the costs of placing the Advertising and creative design/development/production costs. Exclude from this Category expenditures made by the Company in promoting and/or sponsoring entertainment events such as sporting or music events, which should be reported in Category Z (Public Entertainment-Adult-Only Facilities) or Category AA (Public entertainment – not at Adult-Only Facilities), even if those events are televised.

5. CAT-B-EXP (Category B Expenditures: Movie Advertising): Numeric Field. All expenditures for Advertising spots before or during movies except, to the extent practicable expenditures covered by Categories A, E, or I, which should be reported in those categories. This category includes, but is not limited to, movie theater Advertising, DVD Advertising, and streamed movie Advertising (*e.g.*, before or during a movie streamed on Hulu).
6. CAT-C-EXP (Category C Expenditures: Radio Advertising): Numeric Field. All expenditures for Advertising on broadcast, satellite, Internet radio, audio streaming services (*e.g.*, Pandora and Spotify), and podcasts except, to the extent practicable, expenditures covered by Categories E, G, or I, which should be reported in those categories. This category includes, but is not limited to, spot ads, long-form commercials, and sponsored programming (such as radio shows or features bearing the name of or stated to be sponsored by or underwritten by an e-cigarette brand). Expenditures include, but are not limited to, the costs of placing the Advertising and creative design/development/production costs.
7. CAT-D-EXP (Category D Expenditures: Other audio-visual Advertising): Numeric Field. All expenditures for audio, audio-visual, and video Advertising that are not covered by Categories A, B, C, E, G, I, or O, which should be reported in those categories. This category includes, but is not limited to, video Advertising on screens or monitors in commercial establishments, such as video arcades or retail shops, and video games. If Advertising was created for a medium reported in Categories A, B, or C, only report any incremental expenses of having the Advertising disseminated in a medium subject to this category. Exclude from this category expenditures related to video Advertising in transportation vehicles such as taxi cabs, which should be reported in Category O.
8. CAT-E-EXP (Category E Expenditures: Product placement): Numeric Field. All expenditures for product placement, including but not limited to, all expenditures made to procure the appearance of any E-Cigarette Product or the name, logo, or package, or any E-Cigarette Product brand imagery in the creative content of any program or performance (*e.g.*, movies, television shows, Internet series, video games, and other broadcast and digital media), where such appearance can come to the attention of the public. Exclude from this category expenditures related to celebrities, social media influencers, or other Endorsers endorsing E-Cigarette Products, which should be reported in Category I.
9. CAT-F-EXP (Category F Expenditures: Company Internet sites): Numeric Field. All expenditures for Advertising on any Company-owned or -operated Internet site, or any site operated by an agent on the Company's behalf, that contains information about the Company's E-Cigarette Products, and that is directed to persons located in the United States, regardless of where the site is located or the Internet address of the site or page. This category includes, but is not limited to, official Company or brand Internet sites, and other web sites owned or operated by the Company. Expenditures include, but are not limited to, the costs of developing, creating, maintaining, monitoring, and updating the site(s), page(s), or other form(s) of online Advertising disseminated on the Company-owned or -operated site. Do not include expenses covered by Categories K, T through AA, and DD, which should be reported in those categories.

10. CAT-G-EXP (Category G Expenditures: Social media): Numeric Field. All expenditures for Advertising on any Company-controlled social media account or channel (*e.g.*, Facebook, Twitter, Instagram, Snapchat, Reddit, YouTube) that is directed to persons located in the United States, regardless of where the site is located or the Internet address of the site or page. This category includes, but is not limited to, Company-authored posts and replies, and re-posts of other users' content on Company-controlled accounts or channels. To the extent practicable, do not include expenses related to celebrities, social media influencers, or other Endorsers endorsing E-Cigarette Products, which should be reported in Category I.

11. CAT-H-EXP (Category H Expenditures: Other Internet and digital Advertising): Numeric Field. All expenditures for Internet or digital Advertising directed to persons located in the United States that are not covered by Categories A through G, I, or K, which should be reported in those categories. This category includes, but is not limited to, banner, display, pop-up, and native Advertising on third-party Internet sites; search Advertising; sponsored digital content; Advertising using a short message service (SMS text), multimedia (MMS) messaging, instant messaging (IM), and direct messaging (DM); and Advertising viewed in apps or video games. To the extent practicable, expenditures covered by Categories T through DD should be reported in those categories.

12. CAT-I-EXP (Category I Expenditures: Endorsements): Numeric Field. All expenditures made to procure the mention or use of an E-Cigarette Product or E-Cigarette Products, by a celebrity, social media influencer, or other Endorser, in any situation. This category includes, but is not limited to, expenditures for public appearances by any celebrity, social media influencer, or other Endorser, social media blog posts published by any celebrity, social media influencer, or other Endorser, the posting of photographs and videos by any celebrity, social media influencer, or other Endorser, and the posting of product reviews on social media accounts or channels (*e.g.*, Facebook, Twitter, Instagram, Snapchat, YouTube) where such use, mention, or appearance can come to the attention of the public. This category excludes expenditures related to an actor mentioning or using an E-Cigarette Product when assuming the role of a character, which should be reported as product placements in Category E. Expenditures include, but are not limited to, any monetary or other compensation provided to any celebrity, social media influencer, or any other Endorser. Expenditures also include third-party agency costs to identify or select any potential celebrity, social media influencer, or other Endorser, or to create content for the celebrity, social media influencer, or other Endorser.

13. CAT-J-EXP (Category J Expenditures: Direct mail marketing): Numeric Field. All expenditures for direct mail marketing but excluding, if practicable, those expenditures covered by Categories I, K, and T through DD, which should be reported in those categories.

14. CAT-K-EXP (Category K Expenditures: Email marketing): Numeric Field. All expenditures for email marketing but excluding, if practicable, those expenditures covered by Categories I, J, and T through DD, which should be reported in those categories.

15. CAT-L-EXP (Category L Expenditures: Newspaper Advertising): Numeric Field. All expenditures for newspaper Advertising. Expenditures include, but are not limited to, print Advertising and native Advertising. To the extent that Advertising appearing in print editions of newspapers also appears in nearly identical digital editions of the newspapers, such expenditures should be reported here, but other Advertising on a newspaper website should be reported in Category H. This category excludes, if practicable, expenditures made in connection with Categories I, and T through DD, which should be reported in those categories.

16. CAT-M-EXP (Category M Expenditures: Magazine Advertising): Numeric Field. All expenditures for magazine Advertising. Expenditures include, but are not limited to, print Advertising and native Advertising. To the extent that Advertising appearing in print editions of magazines also appears in nearly identical digital editions of the magazines, such expenditures should be reported here, but other Advertising on a magazine website should be reported in Category H. This category excludes, if practicable, expenditures made in connection with Categories I, and T through DD, which should be reported in those categories.

17. CAT-N-EXP (Category N Expenditures: Outdoor Advertising): Numeric Field. All expenditures for Outdoor Advertising but excluding, if practicable, those expenditures covered by Categories I, O, P, and T through DD, which should be reported in those categories. "Outdoor Advertising" means (1) billboards, (2) signs and placards in arenas, stadiums, and shopping malls, whether any of the foregoing are open-air or enclosed, and (3) any other Advertising placed outdoors, regardless of their size, including those on cigarette retailer property. Exclude expenditures for Advertising placed inside physical retail locations, whether facing inward or outward, which should be reported in Category P.

18. CAT-O-EXP (Category O Expenditures: Transit Advertising): Numeric Field. All expenditures for Transit Advertising but excluding, if practicable, those expenditures covered by Categories I, N, and T through DD, which should be reported in those categories. "Transit Advertising" means Advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, subway or train station, airport or any other transportation facility.

19. CAT-P-EXP (Category P Expenditures: Point-of-sale Advertising): Numeric Field. All expenditures for point-of-sale Advertising, that is, materials displayed or distributed at a physical retail location, except for expenses related to video Advertising in retail stores, which should be reported in Category D. Exclude, if practicable, those expenditures covered by Categories T through DD, which should be reported in those categories.

20. CAT-Q-EXP (Category Q Expenditures: Price discounts): Numeric Field. All expenditures for price discounts paid to E-Cigarette Product retailers or wholesalers to reduce the price of E-Cigarette Products to consumers, including off-invoice discounts, buy downs, voluntary price reductions, and trade programs, but excluding retail-value-added expenditures for promotions involving free E-Cigarette Products (*e.g.*, buy two, get one free) covered by Category U and expenditures involving coupons covered by Category T, which should be reported in those categories.

21. CAT-R-EXP (Category R Expenditures: Promotional allowances paid to retailers): Numeric Field. All expenditures for promotional allowances paid to E-Cigarette Product retailers to facilitate the sale or placement of any E-Cigarette Product, including, but not limited to, payments for stocking, shelving, displaying, and merchandising brands, slotting fees, volume rebates, incentive payments, and the cost of E-Cigarette Products given to retailers for free for subsequent resale to consumers, but excluding, if practicable, those expenditures covered by Categories D, H, J, L through N, P, and Q, which should be reported in those categories.
22. CAT-S-EXP (Category S Expenditures: Promotional allowances to wholesalers): Numeric Field. All expenditures for promotional allowances paid to E-Cigarette Product wholesalers to facilitate the sale or placement of any E-Cigarette Product, including payments for volume rebates, incentive payments, value-added services, promotional execution, and satisfaction of reporting requirements. Exclude, if practicable, those expenditures covered by Categories D, H, J, L through N, P, and Q, which should be reported in those categories.
23. CAT-T-EXP (Category T Expenditures: Coupons for reduction of purchase price): Numeric Field. All expenditures associated with coupons used to reduce the retail cost of E-Cigarette Products (whether distributed in person, by mail, online, or otherwise and whether redeemed at the point of sale, by mail, online, or otherwise), including, but not limited to: (1) the total redemption expense (including expenses for payments to retailers or vendors for processing), as determined under Generally Accepted Accounting Principles; and (2) all other costs associated with such coupons incurred in the calendar year, including, but not limited to, costs associated with Advertising, promotion, design, printing, and distribution. An offer such as “buy 2 e-cigarette products and get 50% off the price of a third product” should be reported in this category. Coupons for free E-Cigarette Products or for E-Cigarette Products Sold at a Price of \$1.00 or Less, with no purchase or payment required to obtain the coupons, should be reported in Category Y. Redemption costs should include any payments to retailers above the face value of the coupons.
24. CAT-U-EXP (Category U Expenditures: Retail-value-added – free E-Cigarette Products): Numeric Field. All retail-value-added expenditures for promotions involving free E-Cigarette Products that are given to consumers at the point of sale, including online, in connection with a purchase of E-Cigarette Products (*e.g.*, buy two Disposable E-Cigarette Products, get one free or buy one Open-System Rechargeable E-Cigarette Device, get one free E-Liquid Bottle), whether or not the free products are physically bundled together with the purchased E-Cigarette Products, including all expenditures and costs associated with the value added to the purchase of E-Cigarette Products. For E-Cigarette Products bundled together to be reported in this category, one or more of the products in the bundle must be promoted as free.
25. CAT-V-EXP (Category V Expenditures: Retail-value-added – free items other than E-Cigarette Products): Numeric Field. All retail-value-added expenditures for promotions involving free items other than E-Cigarette Products that are given to consumers at the point of sale, including online, in connection with a purchase of E-Cigarette Products (*e.g.*, buy two E-Cigarette Devices, get a free t-shirt), whether or not the free products are physically bundled

together with the purchased E-Cigarette Products, including, but not limited to, all expenditures and costs associated with the value added to the purchase of E-Cigarette Products. For product bundles to be reported in this category, the products in the bundle that are not E-Cigarette Products must be promoted as free.

26. CAT-W-EXP (Category W Expenditures: Specialty item distribution – branded): Numeric Field. All costs of distributing any items (other than E-Cigarette Products, written or electronic publications, and items whose sole function is to Advertise or promote E-Cigarette Products) that bear the name, logo, or an image of any portion of the package of any E-Cigarette Product sold by the Company, when the items are not given to consumers at the point of sale. For example, this category includes distributing a branded umbrella redeemed with loyalty program points. This category covers items distributed by sale, redemption of coupons or loyalty program points, or otherwise. The expenditures reported in this category shall be the net cost to the Company, *i.e.*, payments received from consumers for such items should be deducted.

27. CAT-X-EXP (Category X Expenditures: Specialty item distribution – not branded): Numeric Field. All costs of distributing any items (other than E-Cigarette Products, written or electronic publications, and items whose sole function is to advertise or promote E-Cigarette Products) that *do not* bear the name, logo, or an image of any portion of the package of any E-Cigarette Product sold by the Company, when the items are not given to consumers at the point of sale. For example, this category includes distributing a gift card to an online music retailer redeemed with loyalty program points. This category covers items distributed by sale, redemption of coupons or loyalty program points, or otherwise. The expenditures reported in this category shall be the net cost to the Company, *i.e.*, payments received from consumers for such items shall be deducted.

28. CAT-Y-EXP (Category Y Expenditures: Sampling): Numeric Field. Sampling of E-Cigarette Products, including, but not limited to, all costs of the E-Cigarette Products themselves and all costs of organizing, promoting, and conducting sampling. Sampling includes the distribution of E-Cigarette Products Sold at a Price of \$1.00 or Less. Sampling also includes the distribution of E-Cigarette Products for consumer testing or evaluation when consumers are able to use the E-Cigarette Products outside of a facility owned or operated by the Company or its agents, but the cost of actual clinical testing or market research associated with such E-Cigarette Product distributions should not be reported. Coupons distributed for free E-Cigarette Products or for E-Cigarette Products Sold at a Price of \$1.00 or Less, with no purchase or payment required to obtain the coupons, should be reported in this category. When reporting expenses associated with such coupons for free E-Cigarette Products or for E-Cigarette Products Sold at a Price of \$1.00 or Less, the value reported should include: (1) the total redemption expenses, including all expenses for payments to retailers or vendors for processing such coupons; and (2) all other costs associated with such coupons incurred in the relevant calendar year, including, but not limited to, costs associated with Advertising, promotion, design, printing, and distribution.

29. CAT-Z-EXP (Category Z Expenditures: Public entertainment – Adult-Only Facilities) Numeric Field. All expenditures for public entertainment events (including, but not limited to, concerts and sporting events) bearing or otherwise displaying the name, logo, or an image of any portion of the package of any of the Company’s E-Cigarette Products or otherwise referring or relating to E-Cigarettes Products, that take place in an Adult-Only Facility. This category includes all expenditures made by the Company in promoting or sponsoring such events. Whenever such activities are combined with the consumer engagement in Adult-Only Facilities, report the expenditures connected with consumer engagement solely in Category BB.

30. CAT-AA-EXP (Category AA Expenditures: Public entertainment – Not Adult-Only Facilities): Numeric Field. All expenditures for public entertainment events (including, but not limited to, concerts and sporting events) bearing or otherwise displaying the name, logo, or an image of any portion of the package of any of the Company’s E-Cigarette Products or otherwise referring or relating to E-Cigarette Products, at facilities that are open to persons under the Legal Age. This category includes all expenditures made by the Company in promoting or sponsoring such events. Whenever such activities are combined with the consumer engagement in facilities open to persons under the Legal Age, report the expenditures connected with consumer engagement solely in Category CC.

31. CAT-BB-EXP (Category BB Expenditures: Consumer Engagement – Adult-Only Facilities): Numeric Field. All expenditures for consumer engagement in Adult-Only Facilities, when such activities do not involve the distribution of (a) free E-Cigarette Products, (b) E-Cigarette Products Sold at a Price of \$1.00 or Less, (c) or coupons for free E-Cigarette Products or E-Cigarette Products Sold at a Price of \$1.00 or Less with no purchase or payment required to obtain the coupons, including any third-party agency fees, but excluding the cost of any coupons distributed (hereinafter “Coupons for Sampling”). Whenever such activities are combined with the distribution of coupons for the reduction of the retail cost of E-Cigarette Products (but that are not coupons for E-Cigarette Products Sold at a Price of \$1.00 or Less), the expenditures associated with those coupons should be reported in Category T. Whenever such activities are combined with the distribution of free E-Cigarette Products, E-Cigarette Products Sold at a Price of \$1.00 or Less, or Coupons for Sampling , report the expenditures solely in Category Y.

32. CAT-CC-EXP (Category CC Expenditures: Consumer Engagement – Not Adult-Only Facilities): Numeric Field. All expenditures for consumer engagement at facilities open to persons under the Legal Age, when such activities do not involve the distribution of (a) free E-Cigarette Products, (b) E-Cigarette Products Sold at a Price of \$1.00 or Less, (c) or Coupons for Sampling. Whenever such activities are combined with the distribution of coupons for the reduction of the retail cost of E-Cigarette Products (but that are not coupons for E-Cigarette Products Sold at a Price of \$1.00 or Less), the expenditures associated with those coupons should be reported in Category T. Whenever such activities are combined with the distribution of free E-Cigarette Products, E-Cigarette Products Sold at a Price of \$1.00 or Less, or Coupons for Sampling, report the expenditures solely in Category Y.

33. CAT-DD-EXP (Category DD Expenditures: Sponsorship): Numeric Field. All expenditures for sponsorship of sports teams or individual athletes but excluding, if practicable, those expenditures covered by Category I, which should be reported in that category. “Sports

teams or individual athletes” includes, but is not limited to competitors in football, baseball, equestrian, automobile, monster truck, professional poker, and e-sport or video game events, competitions, tournaments, and races. This category includes all expenditures made by the Company in promoting and/or sponsoring such teams or athletes. Exclude all expenditures made by the Company in promoting and/or sponsoring sporting events (rather than specific teams or athletes), which should be reported in Category Z (Adult-Only events) or Category AA (events that do not take place in Adult-Only Facilities).

34. CAT-EE-EXP (Category EE Expenditures: All Other): Numeric Field. All expenditures for any Advertising or promotional expenditures not covered by another reporting category. Specify the total amount on the form and briefly describe the specific subject matter of each such expenditure.

35. TOT-ADV-EXP (Total Reportable Expenditures): Numeric Field. All reportable expenditures for the brand as defined in the appropriate explanatory notes. The figure provided for total reportable expenditures should equal the sum of the expenses listed in Categories A through EE for the brand.

36. CAMPUS-EXP (Campus Promotion): Numeric Field. The expenditures reported in this category are intended to be duplicative of expenditures listed in Categories A through EE, above, and totaled on line 35. Report all expenditures related to the Advertising or promotion of the Company’s E-Cigarette Products through college campus programs, including but not limited to, compensation to campus representatives or brand ambassadors, all expenditures for organizing, promoting, or conducting any campus events or promotions, whether on campus or off campus, and all expenditures for implementing such programs or events.

#### OTHER EXPLANATORY NOTES FOR DATAFILE NO. 2

To the extent practicable, expenditures on lines 4 to 34 should be reported in only one category, except for any amounts also reported on line 36 (Campus Promotion). Reportable expenditures (lines 4 to 34) should equal the total on line 35, and should equal the total cost to the Company of administering the activity involved, including commissions and other payments made to separate organizations, such as Advertising agencies and other marketing or promotion agencies. In addition, expenditures reported on lines 4 to 34 should include all expenditures for Advertising and promotion relating to E-Cigarette Products, regardless of whether the Advertising or promotion would constitute “commercial speech,” or would be protected from law enforcement action by the First Amendment. However, such expenditures should not include the costs of employing full-time employees of the Company or any overhead expenses attributable to the activities of such Company employees.

The financial accounting procedure to be used in assigning an expenditure to a particular calendar year should be the accrual rather than cash basis method of accounting.

You are advised that penalties may be imposed under applicable provisions of federal law for failure to file special reports or for filing false reports.

The Special Report called for in this Order is to be filed on or before May 12, 2021.

By direction of the Commission.

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Rebecca Kelly Slaughter, Acting Chair

SEAL

February 11, 2021

The Report required by this Order, or any inquiry concerning it, should be addressed to:

Rosemary Rosso and Michael Ostheimer  
Federal Trade Commission  
Division of Advertising Practices  
600 Pennsylvania Avenue, N.W., Mailstop CC-10528  
Washington, D.C. 20580  
[rosso@ftc.gov](mailto:rosso@ftc.gov)  
[mostheimer@ftc.gov](mailto:mostheimer@ftc.gov)

## ATTACHMENT A

- A. **“Adult-Only Facility”** means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe that no person under the Legal Age is present. A facility or restricted area need not be permanently restricted to adults in order to constitute an Adult-Only Facility, provided that the operator ensures or has a reasonable basis to believe that no person under the Legal Age is present during the event or time period in question.
- B. **“Advertising”** means any written or verbal statement, illustration, or depiction that promotes the sale of E-Cigarette Products or is designed to increase consumer interest in E-Cigarette Products, including, but not limited to: promotional materials; print; television; radio; and Internet, social media, and other digital content, regardless of whether they refer or relate to a specific brand or brands of E-Cigarette Product.

For the purposes of this Order, the term “Advertising” does not refer to and should not be construed to include: (1) Company or divisional names, when used as such, other than in an advertisement relating to E-Cigarette Products; (2) signs on factories, plants, warehouses, and other facilities related to the manufacture or storage of E-Cigarette Products; (3) corporate or financial reports; (4) communications to security holders of the Company and to others who customarily receive such communications; (5) employment advertising; or (6) advertising that will only be seen or heard by the trade.

- C. **“Advertising or Promotion in the United States”** includes all Advertising or promotion in or directed to persons within the United States or to members of the Armed Forces of the United States.
- D. **“Closed-System Rechargeable E-Cigarette Device”** means any E-Cigarette Device that has a rechargeable battery unit and that uses E-Cigarette Cartridges that are disposed of when the e-liquid is used up and are replaced with new E-Cigarette Cartridges.
- E. **“Closed-System Rechargeable E-Cigarette Product”** means any Closed System Rechargeable E-Cigarette Device, any E-Cigarette Cartridge, or any combination of these.
- F. **“Company,” “You,” or “Yours”** means [*Company*].
- G. **“Disposable E-Cigarette Product”** means any E-Cigarette Product that cannot be recharged, but instead is intended to be disposed of when the battery power runs out and the e-liquid is used up. A Disposable E-Cigarette Product can consist of: (1) a system utilizing a non-rechargeable battery and a non-refillable e-liquid component combined into a single unit; or (2) a system utilizing a non-rechargeable battery that that is combined with a separate non-refillable e-liquid component prior to use, and in which both components are disposed of when the battery power runs out and the e-liquid is used up.

- H. **“E-Cigarette Cartridge”** means any cartridge, pod, tank, or other container used as part of a Closed System Rechargeable E-Cigarette Product and sold pre-filled with an e-liquid, usually containing nicotine. E-Cigarette Cartridges are not considered to be E-Liquid Bottles. E-cigarette Cartridges may be packaged with one or more E-Cigarette Device or sold separately.
- I. **“E-Cigarette Device”** means any battery-powered device that delivers aerosolized e-liquid, usually containing nicotine, when inhaled, including, but not limited to, devices such as vape pens, cigalikes, and personal vaporizers. Unless otherwise stated, the term E-Cigarette Device includes devices that are disposable and ones that are rechargeable.
- J. **“E-Cigarette Product”** means any E-Cigarette Device, E-Cigarette Cartridge, or E-Liquid Bottle, or any combination of these.
- K. **“E-Liquid Bottle”** means any bottle or other container of e-liquid, usually containing nicotine, by which users manually fill the tanks of Open-System E-Cigarette Devices. E-Cigarette Cartridges are not considered to be E-Liquid Bottles. E-Liquid Bottles may be packaged with one or more E-Cigarette Devices or sold separately.
- L. **“Endorser”** means any person who communicates an Advertising message that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of the person communicating the message, even if the views expressed by that person are identical to those of the sponsoring advertiser.
- M. **“Give-Away”** or **“Given Away”** means all E-Cigarette Products distributed for free, whether given for free to retailers or wholesalers for subsequent sale to consumers, or given for free to retailers, wholesalers, or consumers through sampling, a free trial promotion, coupons for free product, or otherwise.
- N. **“Given Away in the United States”** or **“Gave Away in the United States”** includes all E-Cigarette Products Given Away: (1) to consumers within the United States; (2) to members of the Armed Forces of the United States located outside the United States; or (3) for delivery to a vessel or aircraft of the Armed Forces of the United States, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States.
- O. **“Legal Age”** means 18 years of age for calendar year 2019 and 21 years of age for calendar year 2020.
- P. **“Net Number”** means the number of units sold after subtracting returns from the gross number.
- Q. **“Net Sales Revenues”** means sales revenues received by the Company after subtracting discounts, allowances, and returns from gross sales revenues.
- R. **“Open-System Rechargeable E-Cigarette Device”** means any E-Cigarette Device that has a rechargeable battery unit and a tank that is manually filled from an E-Liquid Bottle.

- S. **“Open-System E-Cigarette Product”** means any Open-System Rechargeable E-Cigarette Device, any E-Liquid Bottle, or any combination of these.
- T. **“Sold at a Price of \$1.00 or Less”** means sales of any E-Cigarette Product where the consumer obtains at the price of \$1 or less a single E-Cigarette Device, E-Cigarette Cartridge, or E-Liquid Bottle product or a combination of such products bundled together without any additional requirement, such as a prior purchase. Sales to retailers or wholesalers do not meet this definition unless it was reasonably expected that the products would be sold to consumers for \$1 or less.
- U. **“Sold in the United States”** includes all E-Cigarette Products sold: (1) to consumers within the United States; (2) to members of the Armed Forces of the United States located outside the United States; or (3) for delivery to a vessel or aircraft of the Armed Forces of the United States, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States.
- V. **“Sold or Given Away in the United States”** includes all E-Cigarette Products Sold in the United States or Given Away in the United States.
- W. **“United States”** when used in a geographical sense, includes the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the United States territorial possessions (including Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and Johnston Island).
- X. **“UPC Unit”** consists of all the E-Cigarette Devices, E-Cigarette Cartridges, and E-Liquid Bottles packaged together for sale to consumers. For example, if two E-Cigarette Devices and six E-Cigarette Cartridges are packaged together for sale to consumers, this is one UPC Unit.