

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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

File No. P114508

ORDER TO FILE SPECIAL REPORT

Pursuant to a resolution of the Federal Trade Commission dated [Date], entitled “Resolution Directing Use of Compulsory Process,” a copy of which is enclosed, [Company] is ordered to file a Special Report with the Commission not later than May 31, 2021, containing the information specified herein.

The Special Report is required to be subscribed and sworn to by an official of [Company] who has prepared or supervised the preparation of the Special Report from books, records, correspondence, and other data and material in your possession.

The Special 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.

Please supply written responses to each of the following requests:

1. The subscriber to your report is to give his or her full name and business address and state his or her official capacity.
2. State the full name of [Company], its official address, and its date and state of incorporation.
3. State whether [Company] is a subsidiary company; and if so, identify the full name and official address of its ultimate parent company.<sup>2</sup>

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<sup>1</sup> For your information, under the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. For this information request, that number is 3084-0134.

<sup>2</sup> For the purposes of this Order, the term “subsidiary company” shall mean a company that

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  - A. If [Company] is a subsidiary company, identify all other direct and indirect subsidiary companies of [Company]'s ultimate parent company, and for each such subsidiary company: (1) provide its full name and address; (2) identify its direct parent company and all of its direct subsidiary companies; and (3) state whether it has any involvement in the manufacturing, labeling, advertising,<sup>3</sup> promotion, marketing, development, offering for sale, sale, or distribution of smokeless tobacco.
  - B. If [Company] is not a subsidiary company, identify all of [Company]'s direct and indirect subsidiary companies, and for each such subsidiary company: (1) provide its full name and address; (2) identify its direct parent company and all of its direct subsidiary companies; and (3) state whether it has any involvement in the manufacturing, labeling, advertising, promotion, marketing, development, offering for sale, sale, or distribution of smokeless tobacco.
5. Report the net (*i.e.*, after accounting for returns) number of pounds of smokeless tobacco sold in the United States by the Company during calendar year 2020.<sup>4</sup> This includes

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is controlled by another entity; the term "parent company" shall mean an entity that controls another company; and the term "ultimate parent company" shall mean the highest level parent company that is not controlled by another entity.

Furthermore, for purposes of this Order, the term "control" (as used in the terms "control(s)" and "controlled") shall mean: (a) holding 50 percent or more of the outstanding voting securities of an issuer; (b) in the case of an entity that has no outstanding voting securities, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity; or (c) being the managing partner in a partnership, even if such managing partner has a minority ownership interest in the partnership.

<sup>3</sup> For the purposes of this Order, the term "advertising" refers to all activities relating to smokeless tobacco that are intended or likely to be seen or heard by members of the public, regardless of whether they refer or relate to a brand or brands of smokeless tobacco.

<sup>4</sup> For the purposes of this Order, the term "the Company" shall mean: [Company]; all entities identified in response to Questions 3 and 4, above that have any involvement in the manufacturing, labeling, advertising, promotion, marketing, development, offering for sale, sale, or distribution of smokeless tobacco; and all other entities related through common ownership or common governance that have any involvement in the manufacturing, labeling, advertising, promotion, marketing, development, offering for sale, sale, or distribution of smokeless tobacco. The term "the Company" shall not, however, include any entity: (1) whose only involvement in the manufacturing, labeling, advertising, promotion, marketing, development, offering for sale, sale, or distribution of smokeless tobacco is as a convenience store, supermarket, gas station, pharmacy, or other retailer; (2) that sells smokeless tobacco products that are not manufactured

smokeless tobacco given for free to retailers for subsequent sale to consumers. Report sales in whole pounds.

6. Report the net (*i.e.*, after accounting for returns) number of smokeless tobacco product units sold in the United States by the Company during calendar year 2020 in individual packages containing:
  - (a) less than 1 ounce of smokeless tobacco;
  - (b) from 1 ounce to less than 2 ounces of smokeless tobacco;
  - (c) from 2 ounces to less than 5 ounces of smokeless tobacco;
  - (d) from 5 ounces to less than 10 ounces of smokeless tobacco;
  - (e) from 10 ounces to less than 15 ounces of smokeless tobacco;
  - (f) 15 ounces or more of smokeless tobacco.

This includes units given for free to retailers for subsequent sale to consumers. Each unit sold should be reported in the smallest size package in which it could have been sold to consumers. For example, a can roll consisting of ten individual cans each containing 1¼ ounce of moist snuff should be reported as ten units in category 6(b) and *not* as one unit in category 6(e).

7. Report the net (*i.e.*, after accounting for returns) dollar value of smokeless tobacco sold in the United States by the Company, excluding free samples, during calendar year 2020. Report dollar sales value in whole dollars.
8. Report the net (*i.e.*, after accounting for returns) number of smokeless tobacco product units given away in the United States<sup>5</sup> by the Company during calendar year 2020 in

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or imported by the company; and (3) for which sales of smokeless tobacco products and smokeless tobacco related merchandise constitute less than 25% of its total retail sales.

Furthermore, for the purposes of this Order, the term “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).

In addition, for the purposes of this Order, the phrase “sold in the United States” shall include all sales: (a) within the United States; (b) to members of the Armed Forces of the United States located outside the United States; or (c) 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.

<sup>5</sup> For the purposes of this Order, the phrase “given away in the United States” shall include all smokeless tobacco product given away: (a) within the United States; (b) to members of the Armed Forces of the United States located outside the United States; or (c) for delivery to a

individual packages containing:

- (a) less than 1 ounce of smokeless tobacco;
- (b) from 1 ounce to less than 2 ounces of smokeless tobacco;
- (c) from 2 ounces to less than 5 ounces of smokeless tobacco;
- (d) from 5 ounces to less than 10 ounces of smokeless tobacco;
- (e) from 10 ounces to less than 15 ounces of smokeless tobacco;
- (f) 15 ounces or more of smokeless tobacco.

This should include all smokeless tobacco product units distributed for free, whether through sampling, coupons for free product, “buy two, get one free” type offers, or otherwise, as long as such smokeless tobacco product units were not reported as sold in response to Question 6, above. Each unit given away should be reported in the smallest size package in which it could have been given away to consumers.

9. Report the dollar amount expended in calendar year 2020 by the Company on smokeless tobacco advertising, merchandising, or promotion in the United States in each category specified in fields 6-34 of Datafile No. 2.<sup>6</sup> This request is in addition to the request for the electronic datafile.
10. 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, including free smokeless tobacco) in connection with any production or filming of any motion picture(s), television show(s) (including scripted, original shows streamed via the Internet), or video game(s) during calendar year 2020. If so, please identify those show(s), movie(s), and video game(s), and the dollar value of each payment or contribution.

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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.

<sup>6</sup> The term “smokeless tobacco advertising” does not refer to and should not be construed to include: (a) company or divisional names, when used as such, other than in an advertisement relating to smokeless tobacco; (b) signs on factories, plants, warehouses and other facilities related to the manufacture or storage of smokeless tobacco; (c) corporate or financial reports; (d) communications to security holders of the Company and to others who customarily receive such communications; (e) employment advertising; or (f) advertisements directed to underage persons or their parents that are intended to reduce the use of smokeless tobacco products by underage persons.

Furthermore, for the purposes of this Order, the phrase “advertising, merchandising, or promotion in the United States” shall include all advertising, merchandising, or promotion: (a) within the United States; or (b) to members of the Armed Forces of the United States.

- 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, including free smokeless tobacco) during calendar year 2020 to any individual, partnership, or corporation engaged in the business of product placement in motion pictures, television shows (including scripted, original shows streamed via the Internet), or video games. If so, please identify: the person who made the payment or contribution; the recipient of the payment or contribution; the nature and amount of the payment or contribution; and the name of each and every motion picture, television show, and video game in which any of the Company's smokeless tobacco products or smokeless tobacco brand imagery appeared in return for such 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 smokeless tobacco product or any smokeless tobacco brand imagery in any motion picture(s), television show(s) (including scripted, original shows streamed via the Internet), or video game(s) during calendar year 2020. If so, please identify those show(s), movie(s), and video game(s).
- 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 smokeless tobacco product or any smokeless tobacco brand imagery in any motion picture(s), television show(s) (including scripted, original shows streamed via the Internet), or video game(s) during calendar year 2020. If so, please state which show(s), movie(s), and video game(s).
- E. State whether the Company or any other persons working for or on behalf of the Company sought or solicited the appearance of any smokeless tobacco product or any smokeless tobacco brand imagery, or granted approval or otherwise gave permission for the appearance of any smokeless tobacco product or any smokeless tobacco brand imagery, in any video appearing on the Internet, including, but not limited to, sites providing user-generated content, during calendar year 2020. If so, please provide the name of the video(s), the name of the site on which the video(s) appeared, and the Uniform Resource Locator ("URL") for each video.
- F. State whether the Company or any other persons working for or on behalf of the Company engaged in social media marketing that promoted any smokeless tobacco brand or variety,<sup>7</sup> or that used any smokeless tobacco brand imagery, in calendar year 2020. If so, please identify each type of social media marketing

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<sup>7</sup> For purposes of this Order, the term "variety" refers to smokeless tobacco products that have different UPC codes.

used, including, but not limited to, social networking sites, microblogging sites, content-sharing sites, and blogs.

11. To the extent that such information is possessed by the Company or any other persons working for or on behalf of the Company, identify each and every televised event that was aired in calendar year 2020 during which the name, logo, or an image of any portion of the package of any brand or variety of smokeless tobacco product sold by the Company appeared on television through televised coverage of sponsored events, teams, or individuals. Report the dollar amount expended during calendar year 2020 by the Company in the United States on advertisements directed to underage persons or their parents that were intended to reduce the use of smokeless tobacco by underage persons.<sup>8</sup>
12. State whether the Company sold any nicotine lozenges or any nicotine pouches not containing tobacco in the United States during calendar year 2020. If so, please report the net (*i.e.*, after accounting for returns) sales by the Company of such products in the United States during calendar year 2020, both in the number of units sold and in the dollar value of such sales.

For items 5-13, above, if the responsive information exists only within subsidiaries, it is permissible to submit separate reports from each subsidiary with responsive information subscribed and sworn to by an official of each such subsidiary, who has prepared or supervised the preparation of the report from books, records, correspondence, and other data and material in its possession. In such case, an official of [Company] still must submit a report subscribing and swearing that the subsidiaries' reports submitted constitute all relevant information for [Company] and its subsidiaries, and that no contrary information exists. The written report or reports should be submitted as a .pdf file and must include the signature(s) of the above-referenced official(s) attesting to the accuracy of the Company's report.

## **INSTRUCTIONS FOR COMPLETING THE SMOKELESS TOBACCO REPORT DATAFILES**

The Commission requests that information be produced by the Company in spreadsheet format (readable by Microsoft Excel).

The Commission is requesting that sales data and data on smokeless tobacco advertising, merchandising, or promotion in the United States be reported in separate datafiles. The instructions below provide detailed information on how to complete the two datafiles.

### **DATAFILE NO. 1**

#### **INSTRUCTIONS FOR COMPLETING DATAFILE NO. 1**

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<sup>8</sup> For purposes of this Order, "underage persons" means persons younger than 21 years of age.

Sales data and certain other information are to be reported in Datafile No. 1 separately for each variety of smokeless tobacco produced by the Company. For Datafile No. 1, the Commission is requesting data at the variety level, rather than at the brand level.<sup>9</sup>

Information for each brand variety of smokeless tobacco sold in the United States by the Company during calendar year 2020 (including brand varieties sold in a test market or on a limited market basis) should be entered as a separate entry.

There are 21 separate pieces of information (“fields”) requested on Datafile No. 1 for each brand variety.

#### FIELD DEFINITIONS FOR DATAFILE NO. 1:

(1) **YEAR COVERED:** Refers to the calendar year for which data or other information is being reported. Entered as “20XX”.

The next three fields in the record will be used to create a unique identifier for each brand variety of smokeless tobacco. The Company should enter the Company Code; the Commission will enter the brand and variety identification codes.

(2) **COMPANY CODE:** Enter assigned letter:

Reynolds American	A
Swisher	B
North Atlantic	C
Swedish Match	F
Altria	G

(3) **BRAND NUMBER:** FTC will assign these numbers.

(4) **VARIETY CODE:** FTC will assign these numbers.

The next four fields include the brand name and characteristics that make the variety unique. These are:

(5) **BRAND NAME:** Refers to the brand identified on the packaging. If the product is generic or private label, indicate “GENERIC” and complete a separate record for each distinct variety.

(6) **PRODUCT TYPE:** Refers to the type of product, that is, moist or scotch snuff, looseleaf,

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<sup>9</sup> Thus, a brand with one variety will have one record specific to that one variety; a brand with 20 varieties will have 20 records.

or plug chewing tobacco, etc. The Commission has assigned a code letter for various product types. Enter the appropriate letter:

Looseleaf	A
Chewing Tobacco	B
Plug	C
Twist	D
Scotch Snuff	E
Dry Snuff	F
Moist Snuff	G
Snus	H
Dissolvable	I
Other	J

(7) FLAVOR: Description of product flavoring.

(8) VARIETY DESCRIPTION: Refers to any additional description as identified on the packaging or in advertising. The description typically includes characteristics such as grade of tobacco, and other advertised characteristics of the product.

The next 14 fields are used to record the net pounds sold, the net dollar value of those sales, the net number of units sold of each size category, the net number of units given away of each size category, and any starting or ending dates. Each unit sold should be reported in just one size category and should be reported in the smallest size category in which the unit could have been sold to consumers.

(9) POUNDS SOLD: Report one figure for total pounds of the brand variety sold in the United States during calendar year 2020, net of the number of pounds of this variety that were returned. Include smokeless tobacco given for free to retailers for subsequent sale to consumers. Please round to the nearest whole pound.

(10) DOLLAR SALES: Report one figure for the dollar value of this variety's sales in the United States during calendar year 2020, net of the value of this variety's returns. Please report in actual dollars, not in thousands or millions.

(11) UNITS SOLD-A: Report the number of individual units of the brand variety sold in the United States during calendar year 2020 in packages containing less than one ounce of smokeless tobacco, net of the number of units that were returned. This includes units given for free to retailers for subsequent sale to consumers.

(12) UNITS SOLD-B: Report the number of individual units of the brand variety sold in the United States during calendar year 2020 in packages containing at least one ounce and less than two ounces of smokeless tobacco, net of the number of units that were returned. This includes units given for free to retailers for subsequent sale to consumers.

(13) UNITS SOLD-C: Report the number of individual units of the brand variety sold in the

United States during calendar year 2020 in packages containing at least two ounces and less than five ounces of smokeless tobacco, net of the number of units that were returned. This includes units given for free to retailers for subsequent sale to consumers.

(14) UNITS SOLD-D: Report the number of individual units of the brand variety sold in the United States during calendar year 2020 in packages containing at least five ounces and less than ten ounces of smokeless tobacco, net of the number of units that were returned. This includes units given for free to retailers for subsequent sale to consumers.

(15) UNITS SOLD-E: Report the number of individual units of the brand variety sold in the United States during calendar year 2020 in packages containing at least ten ounces and less than fifteen ounces of smokeless tobacco, net of the number of units that were returned. This includes units given for free to retailers for subsequent sale to consumers.

(16) UNITS SOLD-F: Report the number of individual units of the brand variety sold in the United States during calendar year 2020 in packages containing fifteen ounces or more of smokeless tobacco, net of the number of units that were returned. This includes units given for free to retailers for subsequent sale to consumers.

(17) UNITS GIVEN-A: Report the number of individual units of the brand variety given away in the United States during calendar year 2020 in packages containing less than one ounce of smokeless tobacco, net of the number of units that were returned.

(18) UNITS GIVEN-B: Report the number of individual units of the brand variety given away in the United States during calendar year 2020 in packages containing at least one ounce and less than two ounces of smokeless tobacco, net of the number of units that were returned.

(19) UNITS GIVEN-C: Report the number of individual units of the brand variety given away in the United States during calendar year 2020 in packages containing at least two ounces and less than five ounces of smokeless tobacco, net of the number of units that were returned.

(20) UNITS GIVEN-D: Report the number of individual units of the brand variety given away in the United States during calendar year 2020 in packages containing at least five ounces and less than ten ounces of smokeless tobacco, net of the number of units that were returned.

(21) UNITS GIVEN-E: Report the number of individual units of the brand variety given away in the United States during calendar year 2020 in packages containing at least ten ounces and less than fifteen ounces of smokeless tobacco, net of the number of units that were returned.

(22) UNITS GIVEN-F: Report the number of individual units of the brand variety given away in the United States during calendar year 2020 in packages containing fifteen ounces or more of smokeless tobacco, net of the number of units that were returned.

## **DATAFILE NO. 2**

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

The next 34 fields are used to record expenditures on smokeless tobacco advertising, merchandising, or promotion in the United States for the specific categories requested by the FTC, as well as the total and sporting events totals. Please provide information for items 6-34 in thousands of dollars. Expenditures may be rounded to the nearest thousand dollars. For example, \$1,234,567 should be reported as either 1234.567 or 1235, not as 1234567.

The Commission is requesting that expenditures on smokeless tobacco advertising, merchandising, or promotion in the United States be reported only at the brand level, rather than at the variety level.

The Commission is also requesting that expenditures on smokeless tobacco advertising, merchandising, or promotion in the United States that are not attributable to or in connection with any specific brand be reported in a “Non-brand specific” record. Examples of such expenditures might include, among others, Category A expenses advertising or promoting all smokeless tobacco generally or all of the Company’s smokeless tobacco products but not any specific brand of smokeless tobacco and Category W expenses.

To the extent practicable, third-party agency fees relating to smokeless tobacco advertising, merchandising, or promotion should be reported in the categories of advertising or promotion to which those fees relate. For example, agency fees related to magazine advertising should be reported in Category B, agency fees related to point-of-sale advertising should be reported in Category F, and agency fees related to advertising on any Company web site should be reported in Category W. To the extent that third-party agency fees relating to smokeless tobacco advertising, merchandising, or promotion cannot be divided based on the materials to which they relate, they should be reported in Category AA.

#### FIELD DEFINITIONS FOR DATAFILE NO. 2:

(1) YEAR COVERED: Refers to the calendar year for which data or other information is being reported. Entered as “20XX”.

The next two fields in the record will be used to create a unique identifier for each brand of smokeless tobacco. The Company should enter the Company Code; the Commission will enter the brand identification code.

(2) COMPANY CODE: Enter assigned letter:

Reynolds American	A
Swisher	B
North Atlantic	C
Swedish Match	F
Altria	G

(3) BRAND NUMBER: FTC will assign these numbers. For the “Non-brand specific” record, enter the value 99.

(4) BRAND NAME: Refers to the brand identified in advertising. If the product is generic or private label, indicate "GENERIC."

(5) PRODUCT TYPE: Refers to the brand's product type, that is, moist or scotch snuff, looseleaf, or plug chewing tobacco, etc. The Commission has assigned a code letter for various product types. If a brand has varieties of more than one product type, but the varieties of any one product type represent 95 percent or more of the brand's dollar sales, report that product type; otherwise, report "M" for "Multiple" product types. Enter the appropriate letter:

Looseleaf	A
Chewing Tobacco	B
Plug	C
Twist	D
Scotch Snuff	E
Dry Snuff	F
Moist Snuff	G
Snus	H
Dissolvable	I
Other	J
Multiple	M

(6) CAT-A-EXP (Category-A Expenses): Newspaper advertising but excluding, if practicable, those expenditures covered by Categories L through V, which should be reported in those categories.

(7) CAT-B-EXP (Category-B Expenses): Magazine advertising but excluding, if practicable, those expenditures covered by Categories L through V, which should be reported in those categories.

(8) CAT-C-EXP (Category-C Expenses): Outdoor advertising but excluding, if practicable, those expenditures covered by Categories L through V, 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 advertisements placed outdoors, regardless of their size, including those on smokeless tobacco product retailer property.

(9) CAT-D-EXP (Category-D Expenses): All expenditures for audio-visual or video advertising on any medium of electronic communication not subject to the jurisdiction of the Federal Communications Commission. This category includes, but is not limited to, advertisements on: screens at motion picture theaters, television screens or monitors in residential dwellings, as in certain televised programs and through video cassette or DVD entertainment products; and television screens or monitors in commercial establishments, such as video arcades. This category does not include expenditures for advertising on the Internet, which should be reported in Categories W or X below.

- (10) CAT-E-EXP (Category-E Expenses): Direct-mail advertising but excluding, if practicable, those expenditures covered by Categories L through V or Category X, which should be reported in those categories.
- (11) CAT-F-EXP (Category-F Expenses): Point-of-sale advertising, that is materials displayed or distributed at a retail location, but excluding, if practicable, those expenditures covered by Category C or Categories L through V, which should be reported in those categories.
- (12) CAT-G-EXP (Category-G Expenses): Price discounts paid to smokeless tobacco product retailers in order to reduce the price of smokeless tobacco 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 smokeless tobacco 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.
- (13) CAT-H-EXP (Category-H Expenses): Price discounts paid to smokeless tobacco product wholesalers in order to reduce the price of smokeless tobacco 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 smokeless tobacco 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.
- (14) CAT-I-EXP (Category-I Expenses): Promotional allowances paid to smokeless tobacco product retailers in order to facilitate the sale or placement of any smokeless tobacco product, including payments for stocking, shelving, displaying, and merchandising brands, volume rebates, incentive payments, and the cost of smokeless tobacco product given for free to retailers for subsequent sale to consumers but excluding, if practicable, those expenditures covered by Categories A through H, which should be reported in those categories.
- (15) CAT-J-EXP (Category-J Expenses): Promotional allowances paid to smokeless tobacco product wholesalers in order to facilitate the sale or placement of any smokeless tobacco product, including payments for volume rebates, incentive payments, value-added services, promotional execution, and satisfaction of reporting requirements but excluding, if practicable, those expenditures covered by Categories A through I, which should be reported in those categories.
- (16) CAT-K-EXP (Category-K Expenses): Promotional allowances paid to any persons other than retailers, wholesalers, and full-time company employees who are involved in the smokeless tobacco product distribution and sales process in order to facilitate the sale or placement of any smokeless tobacco product but excluding, if practicable, those expenditures covered by Categories A through J, which should be reported in those categories.
- (17) CAT-L-EXP (Category-L Expenses): Sampling of smokeless tobacco products, including the costs of the smokeless tobacco products themselves, all associated excise taxes, and the costs of organizing, promoting, and conducting sampling. Sampling includes the distribution of smokeless tobacco products for consumer testing or evaluation when consumers are able to use the smokeless tobacco 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 smokeless tobacco product distributions should not be reported. Coupons distributed for free smokeless tobacco product, with no purchase or payment required to obtain the coupons or smokeless tobacco product, should be reported in this category. When reporting expenses associated with such coupons for free smokeless tobacco product, the value reported should include: (a) the total redemption expense (including expenses for payments to retailers or vendors for processing) for such coupons in the calendar year, as determined under Generally Accepted Accounting Principles; and (b) 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.

(18) CAT-M-EXP (Category-M Expenses): All costs of consumer engagement at smokeless tobacco product retail locations open to underage persons, including any third-party agency fees, but excluding the cost of coupons or samples distributed in the course of consumer-engagement activities. When such activities are combined with the distribution of coupons for the reduction of the retail cost of smokeless tobacco products, the expenditures associated with those coupons should be reported solely in Category T. When such activities are combined with the distribution of coupons for free smokeless tobacco products, with no purchase or payment required to obtain the coupons or smokeless tobacco products, the expenditures associated with those coupons should be reported solely in Category L.

(19) CAT-N-EXP (Category-N Expenses): All costs of distributing any items (other than smokeless tobacco products, items the sole function of which is to advertise or promote smokeless tobacco products, or written or electronic publications), whether distributed by sale, redemption of coupons, or otherwise, that do not bear the name, logo, or an image of any portion of the package of any brand or variety of smokeless tobacco product sold by the Company. The expenditures reported in this category should be the net cost to the Company, *i.e.*, payments received from consumers for such items should be deducted. When such activities are combined with smokeless tobacco product sampling, the expenditures connected therewith should be reported solely in Category L. When such activities are combined with the sale of smokeless tobacco products, such as when a non-smokeless tobacco product item is blister-packed to a package or packages of smokeless tobacco products, the expenditures connected therewith should be reported solely in Category V.

(20) CAT-O-EXP (Category-O Expenses): Public entertainment events bearing or otherwise displaying the name or logo or an image of any portion of the package of any of the Company's smokeless tobacco products or otherwise referring or relating to smokeless tobacco, that take place in an adult-only facility. Such events must include entertainment, as opposed to simply consumer engagement.<sup>10</sup> This item includes all expenditures made by the Company in

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<sup>10</sup> For the purposes of this Order, the term "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 Underage Person 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 Underage Person is present during the event or time

promoting or sponsoring such events. When such activities are combined with consumer engagement in adult-only facilities, the expenditures connected with consumer engagement should be reported solely in Category Q.

(21) CAT-P-EXP (Category-P Expenses): 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 smokeless tobacco products or otherwise referring or relating to smokeless tobacco, that do not take place in an adult-only facility. Such events must include entertainment, as opposed to simply consumer engagement. This item includes all expenditures made by the Company in promoting or sponsoring such events.

(22) CAT-Q-EXP (Category-Q Expenses): All costs of consumer engagement of smokeless tobacco users in adult-only facilities, including any third-party agency fees, but excluding the cost of coupons distributed. When such activities are combined with smokeless tobacco product sampling (including the distribution of coupons for free smokeless tobacco), the expenditures associated with the sampling should be reported solely in Category L. When such activities are combined with the distribution of coupons for the reduction of the retail cost of smokeless tobacco products, the expenditures connected with those coupons should be reported solely in Category T. When such activities are combined with the distribution of coupons for free smokeless tobacco products, with no purchase or payment required to obtain the coupons or smokeless tobacco products, the expenditures associated with those coupons should be reported solely in Category L.

(23) CAT-R-EXP (Category-R Expenses): Endorsements, testimonials, and product placement. This item includes, but is not limited to, all expenditures made to procure smokeless tobacco use, or the mention of a smokeless tobacco product or company name, or the appearance of a smokeless tobacco product or name, logo, or package, in any situation (*e.g.*, motion picture, television show or program, video game, stage show, or public appearance by a celebrity) where such use, mention, or appearance may come to the attention of the public.

(24) CAT-S-EXP (Category-S Expenses): Sponsorship of sports teams or individual athletes but excluding, if practicable, those expenditures covered by Category R, which should be reported in that category. "Sports teams or individual athletes" includes, but is not limited to, competitors in football, basketball, baseball, hockey, tennis, wrestling, karate, judo, weight lifting, volleyball, skiing, skating, sailing, boating, equestrian, rodeo, automobile, race car, funny car, motorcycle, bicycle, truck, monster truck, tractor-pull, fishing, or hunting events, competitions, tournaments, or races.

(25) CAT-T-EXP (Category-T Expenses): All expenditures and costs associated with coupons for the reduction of the retail cost of smokeless tobacco products (whether distributed in person, by mail, online, or otherwise and whether redeemed at the point of sale, by mail, online, or otherwise), including: (a) the total redemption expense (including expenses for payments to

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period in question.

retailers or vendors for processing) for such coupons in the calendar year, as determined under Generally Accepted Accounting Principles; and (b) 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. Coupons distributed for free smokeless tobacco products, with no purchase or payment required to obtain the coupons or smokeless tobacco products, should be reported in Category L. Redemption costs should include any payments to retailers above the face value of the coupons.

(26) CAT-U-EXP (Category-U Expenses): Retail-value-added expenditures for promotions involving free smokeless tobacco (*e.g.*, buy two, get one free), whether or not the free smokeless tobacco is physically bundled together with the purchased smokeless tobacco, including all expenditures and costs associated with the value added to the purchase of smokeless tobacco (*e.g.*, all associated excise taxes paid on the free smokeless tobacco).

(27) CAT-V-EXP (Category-V Expenses): Retail-value-added expenditures for promotions involving free or discounted non-smokeless tobacco product (*e.g.*, buy two, get a key chain or buy two, save 20 cents per gallon of gasoline) including all expenditures and costs associated with the value added to the purchase of smokeless tobacco.

(28) CAT-W-EXP (Category-W Expenses): All expenditures for advertising on any Company Internet web site that can be accessed by computers 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, expenditures on smokeless tobacco brand web sites.

(29) CAT-X-EXP (Category-X Expenses): All expenditures for advertising on the Internet, other than on the Company's own Internet web sites, including, but not limited to, the World Wide Web, commercial online services, and electronic mail messages, but excluding, if practicable, those expenditures covered by Category Z, which should be reported in that category. This category includes, but is not limited to: spending on all Internet sites and pages, hyperlinks and banners on third-party sites, newsgroups, and online advertisements that can be accessed by computers located in the United States, regardless of where the site is located or the Internet address of the site or page; all direct-mail advertising using electronic mail messages; and all sites and pages, hyperlinks and banners on third-party sites, newsgroups, or electronic mail messages that include the name, logo, symbol, motto, or selling message of a brand of smokeless tobacco products, or are referred to in any other smokeless tobacco advertising, regardless of whether the site, page, hyperlink, banner, or electronic mail message is promoting the sale of smokeless tobacco. Expenditures include but are not limited to the cost of developing, creating, maintaining, monitoring, and updating the site, page, banner, or other form of online advertising, whether located on systems maintained by the Company or by third-party advertisers, commercial online services, or Internet World Wide Web host providers.

(30) CAT-Y-EXP (Category-Y Expenses): All expenditures for telephone advertising. This category includes, but is not limited to, costs associated with the placement of telemarketing calls or the maintenance or operation of incoming telephone lines that allow consumers to participate in any promotion or hear pre-recorded product messages, but excludes costs associated with having customer-service representatives available for responding to consumer complaints or

questions.

(31) CAT-Z-EXP (Category-Z Expenses): All expenditures for social media marketing on web sites or other online services or communities, including, but not limited to, social networking sites, microblogging sites, content-sharing sites, and blogs.

(32) CAT-AA-EXP (Category-AA Expenses): Any advertising or promotional expenditures not covered by another reporting category. Specify the total amount on the written report and briefly describe the specific subject matter of each such expenditure.

(33) TOT-ADV-EXP (Total Reportable Expenditures): Refers to 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 AA for the brand.

(34) SPORTS-EXP (Sports and Sporting Events): Report all advertising and promotional expenditures connected with or related to sports or sporting events, including but not limited to: (i) the sponsoring, advertising, or promotion of sports or sporting events, including any racing or automotive events, support of an individual, group, sports, or racing team, and purchase of or support for sports or racing equipment, uniforms, sports or racing facilities and or training facilities; (ii) all expenditures for advertising including, but not limited to, print, television, radio, billboards, banners, etc. in the name of the Company or any of its smokeless tobacco product brands in a sports or racing facility, on a scoreboard or in conjunction with the reporting of sports or racing results; (iii) all expenditures connected with the production, offer, sale, or provision without fee of all functional promotional items at or in connection with a sporting or racing event, including, but not limited to, clothing, hats, bags, posters, sporting or racing goods, and equipment; (iv) all expenditures associated with smokeless tobacco product sampling or consumer engagement in connection with a sporting event, including sampling or consumer engagement in an adult-only facility in the grounds or parking lot of a sports facility; (v) all expenses relating to a sweepstakes or contest focused on sports or sporting events (e.g. a trip to the Super Bowl, tickets to NASCAR, or a fishing trip), including the promotion of the sweepstakes or contest itself; and (vi) all expenses for sports-related or sporting event-related prizes awarded in sweepstakes or contests that are not focused on sports or sporting events, but not cost of promoting the sweepstakes or contest itself.

The expenditures reported in this category are intended to be duplicative of expenditures listed above on lines 6-32 and totaled on line 33. Do not report any expenditures on this line that have not also been reported on lines 6-32. For example, sponsorship of a sporting event that is reported on line 21 would also be reported on line 34; and a miscellaneous expenditure for sponsoring a sports or racing team would be reported on lines 24 and 34. "Sports and sporting events" includes, but is not limited to, football, basketball, baseball, hockey, tennis, wrestling, karate, judo, weight lifting, volleyball, skiing, skating, sailing, boating, equestrian, rodeo, automobile, race car, funny car, motorcycle, bicycle, truck, monster truck, tractor-pull, fishing, or hunting events, competitions, tournaments, or races.

OTHER EXPLANATORY NOTES FOR DATAFILE NO. 2

Reportable expenditures, that is, expenditures on lines 6-32, should be included in only one category, except for any amounts also reported on line 34 (sports). Expenditures on lines 6-32 should equal the total on line 33, and should reflect the cost to the Company of administering the activity involved, including commissions and other payments made to separate organizations, such as advertising agencies. In addition, expenditures reported on lines 6-34 should include all expenditures for advertising and promotion relating to smokeless tobacco, 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 compensation of full-time employees of the Company or any overhead expenses attributable to the activities of company employees.

The financial accounting procedure to be used in assigning an expenditure to a particular calendar year should be the accrual rather than the cash basis 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 31, 2021.

By direction of the Commission.

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Rebecca Kelly Slaughter, Acting Chair

SEAL

Date of Order: [Date]

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

Michael Ostheimer  
Federal Trade Commission  
Division of Advertising Practices  
600 Pennsylvania Avenue, N.W., Mailstop CC-10528  
Washington, D.C. 20580

mostheimer@ftc.gov