

June 07, 2019

**NOT SUBSTANTIALLY EQUIVALENT**

Commonwealth Brands, Inc.  
ATTENTION: Carole Folmar, J.D., Director of Regulatory & Scientific Affairs  
714 Green Valley Road  
Greensboro, NC 27408

**FDA Submission Tracking Numbers (STNs): Multiple STNs, Refer to Appendix A**

Dear Ms. Folmar:

The Food and Drug Administration (FDA) completed review of your Reports Preceding Introduction of Certain Substantially Equivalent Products into Interstate Commerce (SE Reports), submitted under section 905(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), for the tobacco products specified in Appendix A.

Based on our review of your SE Reports, we find the new tobacco products are not substantially equivalent to the corresponding eligible predicate tobacco products specified in Appendix A.

We have described below our basis for this determination.

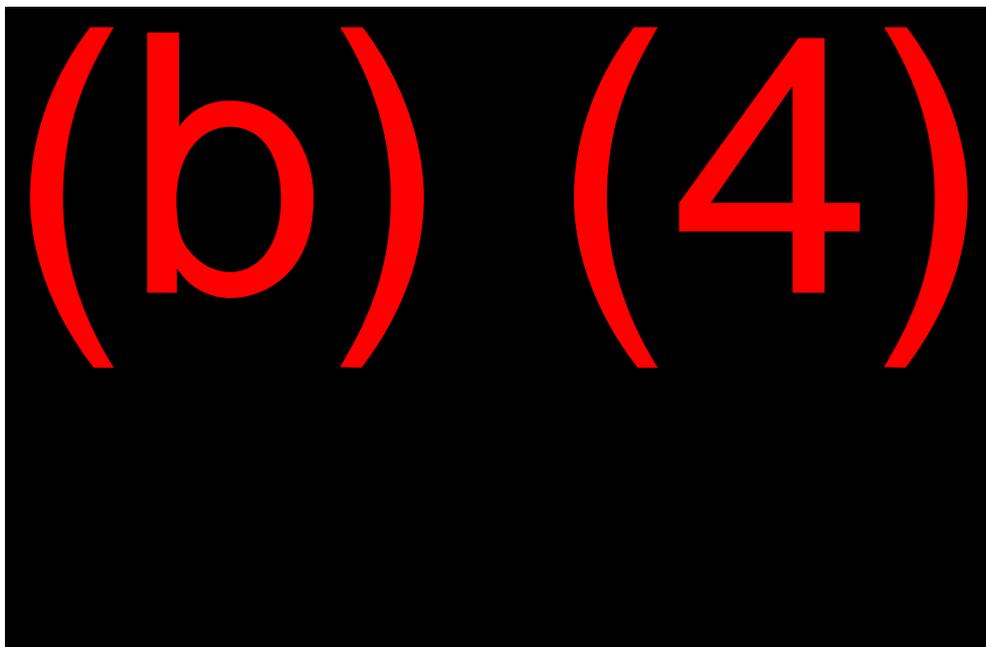
1. SE0002700 – SE0002706 and SE0002708 demonstrate higher tobacco cut filler cadmium and arsenic in one or more surrogate new tobacco products compared to the corresponding surrogate predicate tobacco products. However, your SE Reports do not include arsenic and cadmium smoke yields. Higher toxic metals levels in the tobacco cut filler can lead to higher smoke toxic metal levels and can cause the new tobacco products to raise different questions of public health. You needed to provide a rationale for why higher cut filler arsenic and cadmium do not cause the new tobacco products to raise different questions of public health. One way this issue could have been addressed is to provide the mainstream smoke yields of arsenic and cadmium for the surrogate new and surrogate predicate tobacco products under the ISO and Canadian Intense smoking regimens. If you would have collected this data, you would have needed to provide the following information about HPHC testing so that FDA can fully evaluate the HPHC data:
  - a. Reference product datasets (e.g., 1R6F)
  - b. Quantitative test protocols and method used
  - c. Testing laboratory and their accreditation(s)
  - d. Length of time between date(s) of manufacture and date(s) of testing
  - e. Number of replicates
  - f. Standard deviation(s)
  - g. Complete data sets
  - h. A summary of the results for all testing performed
  - i. Storage conditions prior to initiating testing

2. SE0002700, SE0002704, SE0002706, and SE0002709 provide lists of the tobacco and ingredients added to the “Master Subject” and surrogate predicate products which represent the new and predicate products. You also provided HPHC values under the ISO and HCl smoking regimens for the Master Subject and corresponding surrogate predicate products. Based on the HPHC values you provided, CTP identified the following increases in filler and smoke yields from the Master Subject products when compared to the corresponding surrogate predicate products under the specified smoking regimens:

- SE0002700: Formaldehyde (CI: 31%); cadmium (filler: 36%)
- SE0002704: Cadmium (filler: 25%)
- SE0002706: Cadmium (filler: 24%)
- SE0002709: NNK (CI: 35%); cadmium (28%)

These HPHC increases can result from tobacco blend changes as well as ingredients added to tobacco and structural materials in the new products. The following ingredients that are added to or increased in the new products may contribute to the generation of HPHCs noted above when combusted:

a.  
b.  
c.  
d.  
e.  
f.  
g.  
h.  
i.  
j.  
k.  
l.  
m.  
n.  
o.  
p.



Exposures to the HPHCs listed above have been associated with cancer and noncancer adverse health effects. You voluntarily submitted quantitative risk assessments (QRAs) and probabilistic risk assessments (PRAs) to support your position that increases in HPHC levels as a result of tobacco blend and tobacco ingredient changes do not cause the new product to raise different questions of public health.

While a QRA/PRA is not required for an SE Report, such analyses can inform the review process if adequately described, supported with details and justifications. For FDA to review

any risk assessment that is voluntarily provided in an application, you needed to submit a detailed account of the QRA, in line with recommendations from the National Academy of Sciences. In addition, you needed to provide all data, methods and a detailed description of the results and analysis of the QRA and PRA to demonstrate that user exposure to the Master subject products will not lead to increased toxicity or overall health risk compared to the corresponding surrogate predicate products would have been helpful. The data, results, and analysis of the QRAs and PRAs you provided are limited because they are either unclear or lack sufficient details.

- a. You needed to provide specific evidence or rationale for the inclusion of body weight and daily inhalation rate in your exposure estimation regarding the smoker exposure scenario. In addition, you needed to provide clarification for any differences in exposure lifetime values and include scientific evidence and rationale that the expected exposure lifetime is appropriate for the specific products and expected user populations.
- b. You needed to provide detailed selection criteria for the selection of all reference values and scientific evidence for deviating from established reference values. Including additional evidence or rationale for the selected reference values, given the availability of multiple reference values for a specific constituent. In addition, providing evidence that the reference values used in the calculation of the HQ or ILCR, in both the QRAs and PRAs, are appropriate for the toxicological endpoints associated with the use of the new and predicate products and for the expected product user populations.
- c. You needed to provide a detailed description of how the calculated HQ or ICLR ratios between the respective new and predicate product (or surrogate new/surrogate predicate) HPHCs can be used to determine whether the new products raise different questions of public health.
- d. In the 'Problem Formulation' section, you state that *"the risk assessment (i.e., QRA) presented herein does not concern absolute risk or hazard but rather the comparative risk or hazard between the two products."* However, you provided data and a discussion relating to the absolute risk or hazard (e.g., the total cancer risk or margin-of-exposure). You needed to provide clear description of how you intend to characterize and interpret the QRA and PRA results.
- e. You needed to provide a complete description of the PRA design or simulations, such that it informs the comparison of health risks between the new and predicate products. You needed to provide scientific evidence and rationale demonstrating that the distributions for each parameter and the ranges are appropriate, given the characteristics of the new and predicate products and the anticipated user population of both products. You needed to consider the differences in potential hazards and risks to users of the new and predicate products, given upper percentile comparisons from the simulated distributions. Any rationale or scientific evidence needed to also include further discussion as to the quality and appropriateness of

the inputs as well as the PRA expectations that the resulting parameter estimations accurately reflect the real product or user specific values.

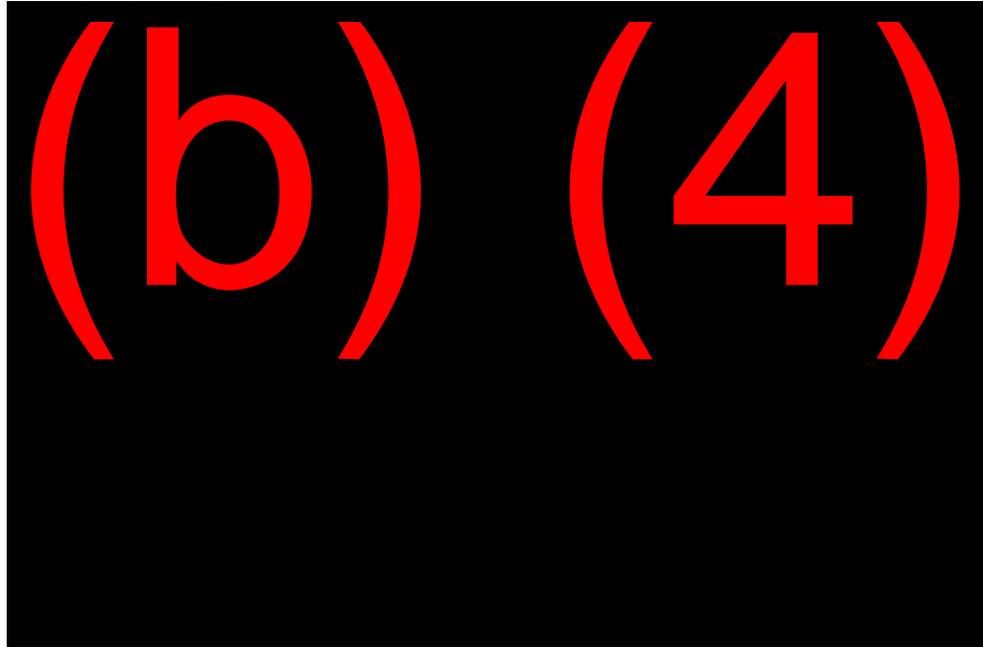
Additionally, the submitted PRA, which relies on the same parameters in the QRA, the distributions and distribution parameters used in the exposure analyses were not adequately described. The current PRAs do not provide 1) the degree of certainty of risk estimates, 2) sufficient characterization of the uncertainty surrounding all critical elements of risk assessments, 3) insight regarding how the risk estimates vary among different percentiles of an exposed population, including sensitive populations or life stages, and 4) description of the key contributors to variability or uncertainty in predicted exposures or risk estimates. You conducted simulations using distributions for population and behavioral parameters, such as cigarettes per day (CpD) and inhalation rates. This type of analysis is useful in examining what factors may impact an individual smoker's risk the most, as noted in your sensitivity analyses. You needed to provide scientific evidence and rationale demonstrating that the distributions for each parameter and the ranges are appropriate given the characteristics of the new and predicate products and the anticipated user population of both products. Any rationale or scientific evidence needed to include discussion as to the quality and appropriateness of the inputs as well as the PRA expectations that the resulting estimations accurately reflect the new and predicate specific values. For example, the distribution of cigarettes per day is listed as 1-95, but you did not provide specific data or rationale showing this is a representative range for the "Master Subject" product or surrogate predicate products. This example is particularly important as it is, according to sensitivity analyses, the biggest driver of variability. Additionally, you did not specify if results of the cumulative ILCR and HI are based on mean estimated values or across a distribution, which would allow for comparisons across a range of percentiles. Comparisons of upper percentiles (e.g. 90<sup>th</sup> or 95<sup>th</sup> percentiles), for example, may likely better capture the potential differences in health risks for users that may occur. In SE0002700, the smoke yield of carcinogenic formaldehyde was increased in the "Master Subject" product beyond the analytically equivalent levels under the HCI smoking condition; and carcinogenic NNK was increased beyond analytically equivalent levels in the Master Subject products described in SE0002700, SE0002704, SE0002706, and SE0002709 which contributes to an increase in cancer risk from cigarette which exceeds the estimated risk for surrogate predicate products. You needed to provide scientific evidence and a rationale that the HPHC increases associated with tobacco blend and ingredient changes in SE0002700, SE0002704, SE0002706, and SE0002709 do not cause the new products to raise different questions of public health.

3. SE0002703 and SE0002708 provide lists of the tobacco and ingredients added to the "Master Subject" and surrogate predicate products which represent the new and predicate products. You also provided HPHC values under the ISO and HCI smoking. Based on the HPHC values you provided, CTP identified the following increases in filler and smoke yields from the Master Subject products when compared to the corresponding surrogate predicate products under the specified smoking regimens:

- SE0002703: NNK (ISO: 37%; CI: 31%); cadmium (filler: 26%)
- SE0002708: NNK (ISO: 28%)

These HPHC increases can result from tobacco blend changes as well as ingredients added to tobacco and structural materials in the new products. The following ingredients that are added to or increased in the new products may contribute to the generation of HPHCs noted above when combusted:

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.
- i.
- j.
- k.
- l.
- m.
- n.
- o.
- p.



You voluntarily submitted quantitative risk assessments (QRAs) and probabilistic risk assessments (PRAs) to support your position that increases in HPHC levels as a result of tobacco blend and tobacco ingredient changes do not cause the new product to raise different questions of public health. However, a risk assessment approach is unlikely to demonstrate that the new products in these SE Reports do not raise different questions of public health because there are only HPHC increases and no concomitant HPHC decreases compared to the surrogate predicate product and therefore there are no decreased risks that could offset the cancer risk and noncancer hazard associated with the HPHC increases associated with the new product. You needed to provide scientific evidence and a rationale that the HPHC increases associated with tobacco blend and ingredient changes in SE0002703 and SE0002708 do not cause the new products to raise different questions of public health.

You did not provide sufficient information to support a finding of substantial equivalence; therefore, we are issuing an order finding that these new tobacco products are not substantially equivalent to an appropriate predicate tobacco product. Upon issuance of this order, your tobacco products are misbranded under section 903(a)(6) of the FD&C Act and adulterated under section 902(6)(A) of the FD&C Act. Failure to comply with the FD&C Act may result in FDA taking regulatory action without further notice. These actions may include, but are not limited to, civil money penalties, seizure, and/or injunction.

To provide time for a sell-off of the products that are the subject of this NSE order, FDA does not intend to take an enforcement action for at least 30 calendar days from the date of this order. Additionally, if you appeal this decision via a request for supervisory review pursuant to 21 C.F.R. § 10.75 and FDA receives your request within 30 calendar days of this order, FDA does not intend to take an enforcement action during the pendency of the appeal review. FDA does not intend to post notice of this NSE order on its misbranded and adulterated NSE Tobacco Products website unless and until it affirms the NSE order.<sup>1</sup>

If you choose not to appeal this NSE order, FDA requests that within 15 days of this letter you submit a plan detailing the steps you plan to take to ensure that these misbranded and adulterated products are not further distributed, imported, sold, marketed, or promoted in the United States by others. Your plan should include information sufficient to distinguish these misbranded and adulterated products from legally marketed tobacco products, including, but not limited to lot numbers, manufacturing codes, and manufacturing dates. The plan should also include a list of your direct accounts, and contain their contact information. Submit your plan to the address below with a cover letter that includes the following text in the subject line:

COMPLIANCE PLAN for SE0002700 – SE0002706, SE0002708, and SE0002709

FDA will post product identifying information on its misbranded and adulterated NSE Tobacco Products website, available to the public at <https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/misbranded-and-adulterated-nse-tobacco-products>.

We remind you that you are required to update your listing information in June and December of each year under section 905(i)(3) of the FD&C Act. As part of this listing update, under section 905(i)(3)(B) of the FD&C Act, you must provide information on the date of discontinuance and product identity for any product you discontinue.

If you wish to appeal request supervisory review of this decision under 21 CFR 10.75, please submit the request via the CTP Portal<sup>2,3</sup> using eSubmitter<sup>4</sup>. Alternatively, submissions may be mailed to:

Food and Drug Administration  
Center for Tobacco Products  
Document Control Center (DCC)  
Building 71, Room G335  
10903 New Hampshire Avenue  
Silver Spring, MD 20993-0002

The CTP Portal and FDA Electronic Submission Gateway (ESG) are generally available 24 hours a day, seven days a week; submissions are considered received by DCC on the day of successful upload. Submissions delivered to DCC by courier or physical mail will be considered timely if received during delivery hours on or before the due date<sup>5</sup>; if the due date falls on a weekend or holiday the delivery

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<sup>1</sup> This compliance policy does not extend to FD&C Act requirements other than the requirement of premarket review.

<sup>2</sup> For more information about CTP Portal, see:

<http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/Manufacturing/ucm515047.htm>

<sup>3</sup> The FDA's Electronic Submission Gateway (ESG) is still available as an alternative to the CTP Portal.

<sup>4</sup> For more information about eSubmitter, see: <https://www.fda.gov/industry/fda-esubmitter>

<sup>5</sup> See <https://www.fda.gov/tobacco-products/about-center-tobacco-products-ctp/contact-ctp>

must be received on or before the preceding business day. We are unable to accept regulatory submissions by e-mail.

We ask that your request be sent as a single submission with a cover letter that includes the following text in your subject line: **REQUEST FOR SUPERVISORY REVIEW for SE0002700 – SE0002706, SE0002708, and SE0002709**. In addition, we ask you to identify each basis for the request and include all information on which you wish your request to be based; it may not contain any new data or analysis that was not part of your SE Reports.

**To legally market the new products described in this application, they must comply with the requirements in section 910(a)(2)(A) of the FD&C Act unless the products are subject to FDA's compliance policy as described in the guidance available at <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/guidance>**

If you have any questions, please contact Megan Nguyen, Regulatory Health Project Manager, at 301-796-7826 or [Megan.Nguyen@fda.hhs.gov](mailto:Megan.Nguyen@fda.hhs.gov).

Sincerely,

Digitally signed by Matthew R. Holman -S  
Date: 2019.06.07 11:45:07 -04'00'

Matthew R. Holman, Ph.D.  
Director  
Office of Science  
Center for Tobacco Products

**Enclosure:**

Appendix A- List of New Tobacco Products Subject of This Letter

## Appendix A

List of new tobacco products that FDA has determined are not substantially equivalent when compared to its predicate tobacco product.

| <b>Common Attributes of SE Reports</b>               |                                 |
|--|---------------------------------|
| <b>Date of Submission:</b>                           | March 18, 2011                  |
| <b>Date of Receipt:</b>                              | March 21, 2011                  |
| <b>Product Manufacturer:</b>                         | Commonwealth Brands, Inc.       |
| <b>Product Category:</b>                             | Cigarettes                      |
| <b>Product Sub-Category:</b>                         | Combusted, Filtered             |
| <b>New Tobacco Product Specific Attributes</b>       |                                 |
| <b>Submission Tracking Number</b>                    | SE0002700                       |
| <b>Product Name:<sup>6</sup></b>                     | Crowns Blue 100s Box            |
| <b>Package Type:</b>                                 | Hard Pack                       |
| <b>Package Quantity:</b>                             | 20 Cigarettes                   |
| <b>Characterizing Flavor:</b>                        | None                            |
| <b>Length:</b>                                       | 99 mm                           |
| <b>Diameter:<sup>7</sup></b>                         | 7.75 mm                         |
| <b>Ventilation:</b>                                  | 47 %                            |
| <b>Predicate Tobacco Product Specific Attributes</b> |                                 |
| <b>Product Name:<sup>6</sup></b>                     | USA Gold Ultra Lights 100's Box |
| <b>Package Type:</b>                                 | Hard Pack                       |
| <b>Package Quantity:</b>                             | 20 Cigarettes                   |
| <b>Characterizing Flavor:</b>                        | None                            |
| <b>Eligibility Status:</b>                           | Grandfathered                   |
| <b>Length:</b>                                       | 99 mm                           |
| <b>Diameter:<sup>7</sup></b>                         | 7.75 mm                         |
| <b>Ventilation:</b>                                  | 47 %                            |

<sup>6</sup> Brand/sub-brand or other commercial name used in commercial distribution.

<sup>7</sup> The applicant submitted the circumference which allowed for a calculation of diameter.

| New Tobacco Product Specific Attributes       |                                       |
|---|---------------------------------------|
| Submission Tracking Number                    | SE0002701                             |
| Product Name: <sup>6</sup>                    | Crowns Blue King Box                  |
| Package Type:                                 | Hard Pack                             |
| Package Quantity:                             | 20 Cigarettes                         |
| Characterizing Flavor:                        | None                                  |
| Length:                                       | 83 mm                                 |
| Diameter: <sup>7</sup>                        | 7.75 mm                               |
| Ventilation:                                  | 47 %                                  |
| Predicate Tobacco Product Specific Attributes |                                       |
| Product Name: <sup>6</sup>                    | USA Gold Ultra Lights Kings Soft Pack |
| Package Type:                                 | Soft Pack                             |
| Package Quantity:                             | 20 Cigarettes                         |
| Characterizing Flavor:                        | None                                  |
| Eligibility Status:                           | Grandfathered                         |
| Length:                                       | 83 mm                                 |
| Diameter: <sup>7</sup>                        | 7.85 mm                               |
| Ventilation:                                  | 47 %                                  |
| New Tobacco Product Specific Attributes       |                                       |
| Submission Tracking Number                    | SE0002702                             |
| Product Name: <sup>6</sup>                    | Crowns Gold 100s Box                  |
| Package Type:                                 | Hard Pack                             |
| Package Quantity:                             | 20 Cigarettes                         |
| Characterizing Flavor:                        | None                                  |
| Length:                                       | 99 mm                                 |
| Diameter: <sup>7</sup>                        | 7.75 mm                               |
| Ventilation:                                  | 18 %                                  |
| Predicate Tobacco Product Specific Attributes |                                       |
| Product Name: <sup>6</sup>                    | USA Gold Lights 100's Box             |
| Package Type:                                 | Hard Pack                             |
| Package Quantity:                             | 20 Cigarettes                         |
| Characterizing Flavor:                        | None                                  |
| Eligibility Status:                           | Grandfathered                         |
| Length:                                       | 99 mm                                 |
| Diameter: <sup>7</sup>                        | 7.75 mm                               |
| Ventilation:                                  | 22 %                                  |

| New Tobacco Product Specific Attributes       |  |
|---|--|
| Submission Tracking Number                    | SE0002703                              |
| Product Name: <sup>6</sup>                    | Crowns Gold King Box                   |
| Package Type:                                 | Hard Pack                              |
| Package Quantity:                             | 20 Cigarettes                          |
| Characterizing Flavor:                        | None                                   |
| Length:                                       | 83 mm                                  |
| Diameter: <sup>7</sup>                        | 7.75 mm                                |
| Ventilation:                                  | 18 %                                   |
| Predicate Tobacco Product Specific Attributes |  |
| Product Name: <sup>6</sup>                    | USA Gold Lights Kings Box              |
| Package Type:                                 | Hard Pack                              |
| Package Quantity:                             | 20 Cigarettes                          |
| Characterizing Flavor:                        | None                                   |
| Eligibility Status:                           | Grandfathered                          |
| Length:                                       | 83 mm                                  |
| Diameter: <sup>7</sup>                        | 7.85 mm                                |
| Ventilation:                                  | 14 %                                   |
| New Tobacco Product Specific Attributes       |  |
| Submission Tracking Number                    | SE0002704                              |
| Product Name: <sup>6</sup>                    | Crowns Menthol Dark Green 100s Box     |
| Package Type:                                 | Hard Pack                              |
| Package Quantity:                             | 20 Cigarettes                          |
| Characterizing Flavor:                        | Menthol                                |
| Length:                                       | 99 mm                                  |
| Diameter: <sup>7</sup>                        | 7.75 mm                                |
| Ventilation:                                  | 6 %                                    |
| Predicate Tobacco Product Specific Attributes |  |
| Product Name: <sup>6</sup>                    | USA Gold Full Flavor Menthol 100's Box |
| Package Type:                                 | Hard Pack                              |
| Package Quantity:                             | 20 Cigarettes                          |
| Characterizing Flavor:                        | Menthol                                |
| Eligibility Status:                           | Grandfathered                          |
| Length:                                       | 99 mm                                  |
| Diameter: <sup>7</sup>                        | 7.75 mm                                |
| Ventilation:                                  | 6 %                                    |

| New Tobacco Product Specific Attributes       |   |
|---|---|
| Submission Tracking Number                    | SE0002705                               |
| Product Name: <sup>6</sup>                    | Crowns Menthol Green 100s Box           |
| Package Type:                                 | Hard Pack                               |
| Package Quantity:                             | 20 Cigarettes                           |
| Characterizing Flavor:                        | Menthol                                 |
| Length:                                       | 99 mm                                   |
| Diameter: <sup>7</sup>                        | 7.75 mm                                 |
| Ventilation:                                  | 18 %                                    |
| Predicate Tobacco Product Specific Attributes |   |
| Product Name: <sup>6</sup>                    | USA Gold Menthol Lights 100's Box       |
| Package Type:                                 | Hard Pack                               |
| Package Quantity:                             | 20 Cigarettes                           |
| Characterizing Flavor:                        | Menthol                                 |
| Eligibility Status:                           | Grandfathered                           |
| Length:                                       | 99 mm                                   |
| Diameter: <sup>7</sup>                        | 7.75 mm                                 |
| Ventilation:                                  | 22 %                                    |
| New Tobacco Product Specific Attributes       |   |
| Submission Tracking Number                    | SE0002706                               |
| Product Name: <sup>6</sup>                    | Crowns Menthol Green King Box           |
| Package Type:                                 | Hard Pack                               |
| Package Quantity:                             | 20 Cigarettes                           |
| Characterizing Flavor:                        | Menthol                                 |
| Length:                                       | 83 mm                                   |
| Diameter: <sup>7</sup>                        | 7.75 mm                                 |
| Ventilation:                                  | 18 %                                    |
| Predicate Tobacco Product Specific Attributes |   |
| Product Name: <sup>6</sup>                    | USA Gold Menthol Lights Kings Soft Pack |
| Package Type:                                 | Soft Pack                               |
| Package Quantity:                             | 20 Cigarettes                           |
| Characterizing Flavor:                        | Menthol                                 |
| Eligibility Status:                           | Grandfathered                           |
| Length:                                       | 83 mm                                   |
| Diameter: <sup>7</sup>                        | 7.85 mm                                 |
| Ventilation:                                  | 14 %                                    |

| New Tobacco Product Specific Attributes       |                                |
|---|--------------------------------|
| Submission Tracking Number                    | SE0002708                      |
| Product Name: <sup>6</sup>                    | Crowns Red 100s Box            |
| Package Type:                                 | Hard Pack                      |
| Package Quantity:                             | 20 Cigarettes                  |
| Characterizing Flavor:                        | None                           |
| Length:                                       | 99 mm                          |
| Diameter: <sup>7</sup>                        | 7.75 mm                        |
| Ventilation:                                  | 6 %                            |
| Predicate Tobacco Product Specific Attributes |                                |
| Product Name: <sup>6</sup>                    | USA Gold Full Flavor 100's Box |
| Package Type:                                 | Hard Pack                      |
| Package Quantity:                             | 20 Cigarettes                  |
| Characterizing Flavor:                        | None                           |
| Eligibility Status:                           | Grandfathered                  |
| Length:                                       | 99 mm                          |
| Diameter: <sup>7</sup>                        | 7.75 mm                        |
| Ventilation:                                  | 6 %                            |
| New Tobacco Product Specific Attributes       |                                |
| Submission Tracking Number                    | SE0002709                      |
| Product Name: <sup>6</sup>                    | Crowns Red King Box            |
| Package Type:                                 | Hard Pack                      |
| Package Quantity:                             | 20 Cigarettes                  |
| Characterizing Flavor:                        | None                           |
| Length:                                       | 83 mm                          |
| Diameter: <sup>7</sup>                        | 7.75 mm                        |
| Ventilation:                                  | 14 %                           |
| Predicate Tobacco Product Specific Attributes |                                |
| Product Name: <sup>6</sup>                    | USA Gold Full Flavor Kings Box |
| Package Type:                                 | Hard Pack                      |
| Package Quantity:                             | 20 Cigarettes                  |
| Characterizing Flavor:                        | None                           |
| Eligibility Status:                           | Grandfathered                  |
| Length:                                       | 83 mm                          |
| Diameter: <sup>7</sup>                        | 7.85 mm                        |
| Ventilation:                                  | 6 %                            |