

**Environmental Assessment for a Marketing Order for
Black & Mild® FT
Manufactured by
John Middleton Co.**

**Prepared by Center for Tobacco Products
U.S. Food and Drug Administration**

November 18, 2019

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1. Applicant and Manufacturer Information

Applicant Name:	Altria Client Services LLC
Applicant Address:	2325 Bells Road Richmond, VA 23234
Manufacturer Name:	John Middleton Co.
Address Where the Product are Manufactured:	2211 Bells Road, JMC Bay 8 Building Richmond, VA 23234

A subcontracted manufacturer would also produce the new product. Information regarding this manufacturer is in Confidential Appendix 1.

2. Product Information

Submission Tracking Number (STN), New Product Name, and Predicate Product Name

STN	New Product Name	Predicate Product Name
SE0015126	Black & Mild® FT	Black & Mild FT – 5 Pack

Product Identification

Product Category	Cigar
Product Subcategory	Filtered, sheet-wrapped
Quantity per Retail Sale Unit	Five individually wrapped, filtered cigars per pack (which serves as a display tray) with 30 packs per shipping case.
Product Package	The packaging materials consist of a polypropylene overwrap, paperboard pack, polypropylene pack overwrap, polypropylene tear tape, paperboard display tray and corrugated board shipping case.

3. The Need for the Proposed Action

The proposed action, requested by the applicant, is for Food and Drug Administration (FDA) to issue a marketing order under the provisions of sections 910 and 905(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) after finding the new tobacco product substantially equivalent to the predicate product. The applicant wishes to introduce the new tobacco product into interstate commerce for commercial distribution in the United States and submitted to the Agency a substantial equivalence (SE) report to obtain a marketing order. The Agency shall issue the marketing order if the new product is found substantially equivalent to the predicate product. The predicate product is a grandfathered product, GF1602166, commercially marketed in the United States as of February 15, 2007.

The new product differs from the predicate product in the ingredients, tip, rod, and filter dimensions along with cigar wrapper composition (Confidential Appendix 1). The applicant provided first- and fifth-year marketing projections for the new product (Confidential Appendix 2).

4. Alternatives to the Proposed Action

The no-action alternative is the Agency does not issue a marketing order for the new tobacco product.

5. Potential Environmental Impacts of the Proposed Action and Alternatives - Manufacturing the New Product

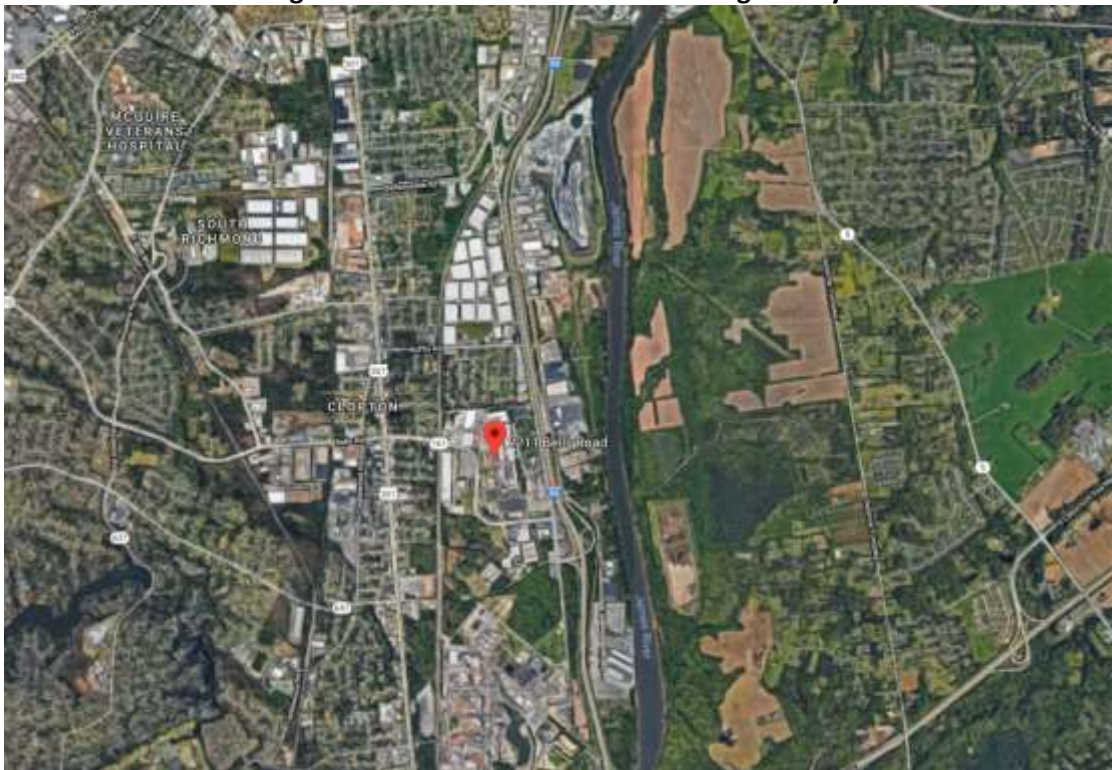
The Agency considered potential impacts to resources in the environment that may be affected by manufacturing the new product and found no significant impacts, based on Agency-gathered information and the following information submitted by the applicant:

- No increase in the facility production beyond its current permitted production capacity is expected due to manufacturing the new product.
- The new product is intended to replace the predicate product if a marketing order is issued.
- No facility expansion or new construction is expected due to manufacturing the new product.

5.1 Affected Environment

The new product would be manufactured at 2211 Bells Road, Richmond, VA 23234 (Figure 1) and the subcontracted manufacturing facility (Confidential Appendix 1).

Figure 1. Location of the Manufacturing Facility¹



¹ Google. 2019. Map of 2211 Bells Road, Richmond, VA 23234. Retrieved from Google Maps: www.google.com/maps. September 25, 2019.

The manufacturing facility is surrounded by a residential development across a road to the north; a two-lane divided road and an interstate freeway (I-95) to the east; two hotels, a fast food restaurant, and a gas station at the southeast corner; undeveloped forested land and a petroleum product pumping station and delivery terminal to the south; and a railroad to the west with a spur into the manufacturing facility.²

The facility is located in the James River watershed, which occupies the central portion of Virginia and covers 24% of total land area of the commonwealth of Virginia.^{3,4} Land use within the watershed is 65% forest, 19% agriculture and farming, and 12% urbanized area.⁵

The affected environment includes human and natural environments surrounding the facility.

5.2 Air Quality

The Agency does not anticipate any new chemicals would be emitted into the environment due to manufacturing the new product. The applicant stated that manufacturing the new product is not expected to result in changes in air emissions; accordingly, the applicant concluded that manufacturing the new product would not require a revised or new air permit.

5.3 Water Resources

The Agency does not anticipate that manufacturing the new product would cause the discharge of any new chemicals into water. The applicant stated that manufacturing the new product is not expected to result in changes in wastewater discharge and therefore, would not require a revised or new wastewater discharge permit.

5.4 Soil, Land Use, and Zoning

The Agency does not anticipate that manufacturing the new product would lead to changes in soil, land use, or zoning. No facility expansion or new construction due to manufacturing the new product would be expected. Therefore, no zone changes or land conversion of prime farmland, unique farmland, or farmland of statewide importance to non-agricultural use would be anticipated.

5.5 Biological Resources

The Agency does not anticipate manufacturing the new product would jeopardize the continued existence of any listed species or result in the destruction or adverse modification of the habitat of any such species identified under the Endangered Species Act (ESA). The applicant stated that there are no

² Ibid.

³ A watershed is an area of land where all bodies of water drain to a common outlet such as the outflow of a reservoir, mouth of a bay, or any point along a stream channel. Such bodies of water include the following: surface water from lakes, streams, reservoirs and wetlands; the underlying ground water; and rainfall, See <https://water.usgs.gov/edu/watershed.html> and <http://www.dcr.virginia.gov/soil-and-water/document/wshedguideb2b.pdf>.

⁴ Virginia Department of Environmental Quality. Available at: <http://deq.state.va.us/Portals/0/DEQ/Water/SWRP/App%20B%20James%20River%20Basin%20Summary.pdf>. Accessed September 26, 2019

⁵ Ibid

plans of expanding the facility production beyond its current permitted level. The applicant reviewed the U.S. Fish and Wildlife Service's (U.S. FWS) critical habitat and endangered species maps. According to the maps, three threatened species (two flowering plants, the sensitive joint-vetch and the swam pink, as well as one mammal, the northern long-eared bat), and one endangered freshwater mussel species are listed in the city of Richmond and the bordering counties (Henrico and Chesterfield Counties).^{6,7} However, the applicant stated that none of these species are found near the manufacturing facility. The Agency searched the U.S. FWS maps and verified the accuracy of the listed species.

5.6 Regulatory Compliance

The applicant stated that the manufacturing facility complies with all federal, state, and local environmental regulations. The applicant provided detailed information for the following air emission, storm water, and wastewater permits:

- (1) Stationary source permit (Registration no. 52608) in accordance with provisions of the Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, issued by the Department of Environmental Quality, Commonwealth of Virginia (VA DEQ).
- (2) Wastewater permit number 2149 issued by the Division of Wastewater Treatment, City of Richmond. The applicant stated that the facility complies with the requirements of this permit, which include quantitative and qualitative discharge monitoring, and flow monitoring and reporting. The permit requires compliance with the relevant effluent limitations (40 CFR 400 – 699) to control the discharge of pollutants in the wastewater, ensuring the wastewater is of a certain quality for effective treatment at the POTW facility. The applicant stated that the facility submits regular discharge monitoring reports to VA DEQ.

The Agency's search for the manufacturing facility in the EPA's Enforcement and Compliance History Online (ECHO) database did not reveal any violations of the environmental laws and regulations.⁸ The applicant stated that the facility complies with the ESA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

The applicant also stated that the subcontracted manufacturing facility complies with all applicable laws and regulations.

5.7 Socioeconomics and Environmental Justice

No changes on socioeconomics are anticipated due to manufacturing the new product. The Agency does not anticipate any impacts on employment, revenue, or taxes because the new product is intended to replace similar tobacco products currently manufactured at the facility.

No changes in impacts on environmental justice are anticipated. The applicant stated that the future year projections of cigar production at the facility, including the new product, are within the existing permitted manufacturing capacity and would not require facility expansion. Also, as discussed, the

⁶ U.S. Fish and Wildlife Services (U.S. FWS), available at: <https://www.fws.gov/endangered/>. Accessed September 26, 2019.

⁷ Critical habitat maps available at: <https://databasin.org/datasets/d579d87eb54f4374a77ea53e7ef66449>.

⁸ EPA ECHO Detailed Facility Report: Philip Morris USA Facility, Richmond, VA. Available at: <https://echo.epa.gov/detailed-facility-report?fid=110000869793>. Accessed September 26, 2019.

emissions and discharges from the facility are not expected to change because of manufacturing the new product. Thus, though 2010 U.S. Census and American Community Survey data show that 80% of the population within a three-mile radius of the manufacturing facility is minority,⁹ no disproportionate impacts to environmental justice populations would occur as a result of manufacturing the new product. In addition, the facility is not located within Native American lands.

5.8 Solid Waste and Hazardous Materials

The Agency does not foresee that the introduction of the new product would notably affect the current manufacturing waste generated from the facility production of all cigars. The Agency anticipates that waste generated due to manufacturing the new product would be released to the environment and disposed of in landfills in the same manner as any other waste generated from any other products manufactured in the same facility. The applicant stated that manufacturing the new product would not require any additional environmental controls for solid waste disposal. Therefore, no new or revised waste permit or construction of new waste management facility is expected.

5.9 Floodplains, Wetlands, and Coastal Zones

There would be no facility expansion due to manufacturing the new product and the applicant did not propose any land disturbance; therefore, there would be no effects on floodplains, wetlands, or coastal zones.

5.10 Cumulative Impacts

The Agency does not anticipate the proposed action to incrementally increase or change the chemicals released to the air from the facility due to the tobacco manufacturing. A search in the EPA's Toxic Release Inventory (TRI) database showed that in 2018, Philip Morris USA manufacturing facility in Richmond, Virginia released 10,313 pounds of nicotine and nicotine salts to the air, but released no other hazardous air pollutants at reportable levels (Table 1).¹⁰ Nicotine and nicotine salts, have known adverse developmental effects.¹¹ The applicant stated that the facility does not anticipate any future increased production beyond its current permitted capacity and therefore, a revised or new air permit would not be required. The TRI database search did not show that the Philip Morris USA manufacturing facility disposed of, treated, or released into the environment any other reportable toxicants associated with manufacturing tobacco products. In addition, EPA's ECHO database did not show that the facility released the following reportable criteria pollutants: ozone, lead, particulate matter, or sulfur dioxide, at or above the reportable threshold levels to air.

⁹ EPA ECHO Detailed Facility Report: Demographic profile of surrounding area (3 miles). Available at: <https://echo.epa.gov/detailed-facility-report?fid=110000869793>. Accessed September 26, 2019.

¹⁰ U.S. Environmental Protection Agency (EPA). TRI Data Form R & A Download. Available at: https://www3.epa.gov/enviro/facts/tri/form_ra_download.html. Searched on September 26, 2019.

¹¹ EPA. myRight-to-Know, available at: <https://myrtk.epa.gov/info>. The site allows for searching the industrial facilities that manage toxic waste chemicals by entering the facility address and clicking on the facility location on the map. Accessed September 26, 2019.

Table 1 Management of Chemical Waste Associated with Manufacturing Tobacco Products at Philip Morris USA Facility in 2018

Production-Related Waste Managed or Released		Chemical Mass (Pounds)	
Recycled		122,530	
Energy Recovery		0	
Treated		94,266	
<i>Subtotal Waste Managed</i>		<i>216,796</i>	
On-Site Release	Air	Ammonia	0
		Nicotine and Nicotine Salts	10,683
	Water	Ammonia	0
		Nicotine and Nicotine Salts	0
Land	Ammonia	0	
	Nicotine and Nicotine Salts	0	
Off-Site Release		35,528	
<i>Subtotal Waste Released</i>		<i>46,211</i>	
Total Production-Related Waste		263,007	

The other manufacturing facility in the industrial complex (Altria Compounds, LLC) which has the potential to generate and manage 2,200 pounds of monthly hazardous waste does not report to EPA's Toxic Release Inventory database, as it is considered a minor facility.^{12,13} EPA's ECHO database did not show that the facility released the following reportable criteria pollutants: ozone, lead, particulate matter, or sulfur dioxide, at or above the reportable threshold levels to air. The applicant does not anticipate manufacturing the new product would require a revised or new storm water permit or waste water permit.

5.11 Impacts of the No-Action Alternative

The no-action alternative would not change the existing condition of manufacturing cigars at the listed facility, as similar tobacco products would continue to be manufactured.

6. Potential Environmental Impacts of the Proposed Action and Alternatives – Use of the New Product

The Agency evaluated potential impacts to resources in the environment that may be affected by use of the new product and found no significant impacts based on Agency-gathered information and the applicant's submitted information. Included in the information the Agency considered were the projected market volumes (Confidential Appendix 3) for the new product and the documented cigar use in the United States.

6.1 Affected Environment

The affected environment includes human and natural environments in the United States because the marketing order would allow for the new tobacco product to be sold to consumers in the United

¹² See footnote 7.

¹³ See footnote 10.

States.

6.2 Air Quality

The Agency does not anticipate new chemicals would be released into the environment as a result of use of the new product, relative to chemicals released into the environment due to use of other cigars already on the market because (1) the combustion products from the new product would be released in the same manner as the combustion products of other marketed cigars; (2) the new product is expected to compete with, or replace, other currently marketed cigars; and (3) the ingredients in the new product are used in other currently marketed tobacco products.

6.3 Environmental Justice

No new emissions are expected due to use of the new product. Therefore, there would be no new disproportionate impacts on minority or low-income populations.

6.4 Cumulative Impacts

The impacts from use of combusted tobacco products include exposure to secondhand smoke (SHS) produced from burned cigars, cigarettes, cigarillos and pipes. Particles emitted by smoking may remain on surfaces, be re-emitted back into the gas phase, or react with oxidants and other compounds in the environment to yield secondary pollutants, thirdhand smoke (THS). These pollutants coexist in a mixture in the environment alongside SHS (Burton, 2011; Matt et al., 2011).

There is no safe level of exposure to SHS (U.S. Department of Health and Human Services, 2006a and 2006b). Even low levels of SHS can harm children and adults in many ways, including the following:

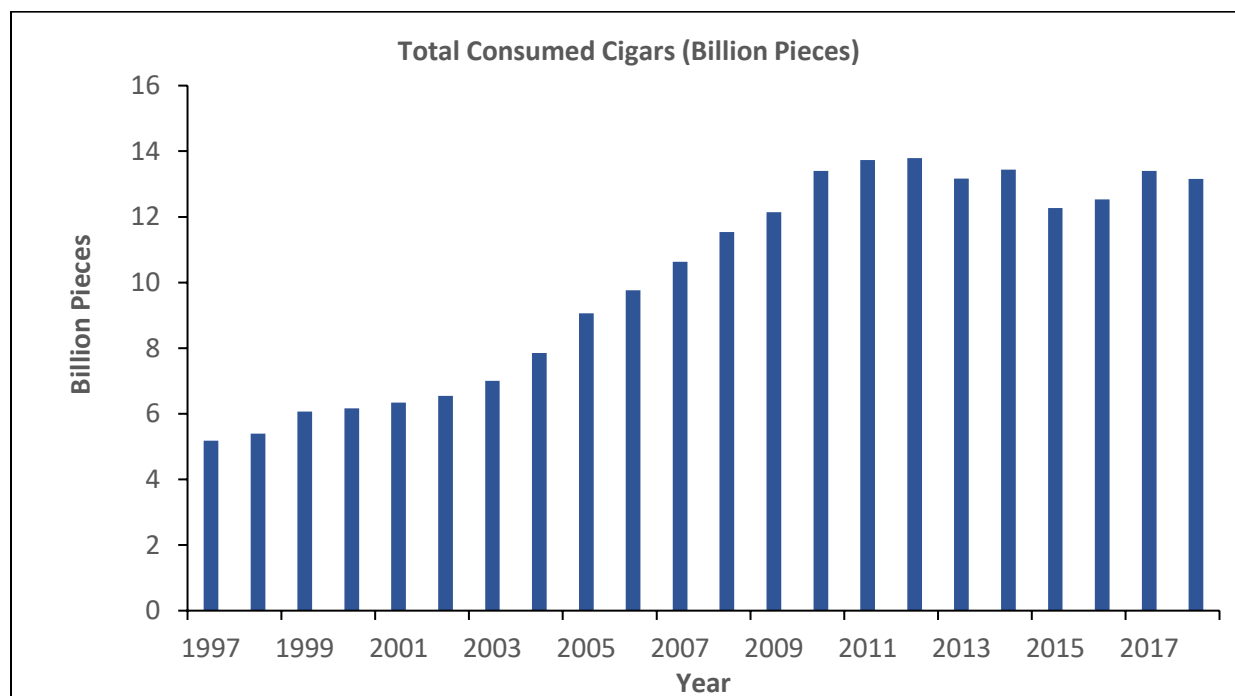
- The U.S. Surgeon General estimates that living with a smoker increases a nonsmoker's chances of developing lung cancer by 20 to 30% (U.S. Department of Health and Human Services, 2014).
- Exposure to SHS increases school children's risk for ear infections, lower respiratory illnesses, more frequent and more severe asthma attacks, and slowed lung growth. Such exposure can cause coughing, wheezing, phlegm, and breathlessness (U.S. Department of Health and Human Services, 2006a and 2006b).
- SHS causes more than 40,000 deaths a year (U.S. Department of Health and Human Services, 2014).

The consumption of cigars in the United States increased significantly from 1997 to 2011. From 2011 through 2018, the trend of cigar use has stabilized with minor decrease overall, per the U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB) Statistical Release reports (Figure 2).¹⁴ In combination with declines in use of other tobacco products, this likely is responsible for the decline in SHS exposure observed in several studies that evaluated the levels of SHS exposure in children and nonsmokers living in homes of smokers (Homa et al., 2015; Yao et al., 2016). Despite the considerable ethnic and racial disparities in SHS exposure in vulnerable populations, data from the National Health and Nutrition Examination Survey showed a decline in SHS exposure from 1999-2000 to 2011-2012 with the highest prevalence of exposure among non-Hispanic subpopulations (46.8%), compared to Mexican Americans (23.9%) and

¹⁴ U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB) statistical data available at: <https://www.ttb.gov/tobacco/tobacco-stats.shtml>. Accessed September 26, 2019.

non-Hispanic whites (21.8%) in 2011-2012 (Homa et al., 2015). There were also significant declines in SHS exposure prevalence noted in the 2000 and 2010 National Health Interview Survey Cancer Control Supplements. Exposure to SHS declined in Hispanics from 16.3% in 2000 to 3.1% in 2010, non-Hispanic Asians from 13.4% in 2000 to 3% in 2010, and non-Hispanic blacks from 31.2% in 2000 to 11.5% in 2010 as compared to exposures in non-Hispanic whites, which declined from 25.8% in 2000 to 9.7% in 2010 (Yao et al., 2016).

Figure 2. Use of Cigars in the United States, 1997 – 2018



As of March 2019, 28 states and the District of Columbia had implemented comprehensive smoke-free laws (American Lung Association, 2018). Such laws are also expected to reduce the levels of non-users' exposure to SHS and THS.

6.5 Impacts of the No-Action Alternative

The no-action alternative would not change the existing condition of use of cigars, as similar tobacco products would continue to be marketed.

7. Potential Environmental Impacts of the Proposed Action and Alternatives – Disposal of the New Product

The Agency considered potential impacts to resources in the environment that may be affected by disposal of the new product. Based on TTB data, which shows relatively stable rates of cigar use in the United States since 2010, and the applicant's submitted information, including market volume projections for the new product, the Agency found no significant impacts.

7.1 Affected Environment

The affected environment includes human and natural environments in the United States because the marketing order would allow for the applicant to distribute and sell the new tobacco product to consumers in the United States.

7.2 Air Quality

The Agency does not anticipate disposal of the new product or the packaging material would lead to the release of new or increased chemicals into the air.

No changes in air quality are anticipated from disposal of the cigar butts of the new product. The chemicals in the cigar butts are commonly used in other currently marketed cigars. Because the new product is anticipated to compete with or replace other currently marketed cigars, the butt waste generated from the new product would replace the same type of waste. Therefore, the fate and effects of any materials emitted into the air from disposal of the new product are anticipated to be the same as any materials from other cigars disposed of in the United States.

No changes in air quality from disposal of the packaging materials in the new product would be expected because (1) the paper and plastic components of the packages are more likely to be recycled or at least a portion of the packaging waste is likely to be recycled, (2) the packaging materials are commonly used in the United States, and (3) the waste generated due to disposal of the packaging is a minuscule portion of the municipal solid waste per FDA's experience in evaluating the packaging waste generated from tobacco products.

7.3 Water Resources

No changes in any impacts on water resources are expected due to disposal of the unburned cigars, cigar filter tips and packaging from the new product because the chemicals in the new product would be the same or similar as in currently marketed cigars and the new product would compete with or replace other cigars currently on the market.

7.4 Biological Resources

The proposed action is not expected to change the continued existence of any endangered species or result in the destruction or adverse modification of the habitat of any such species, as prohibited under the U.S. ESA because (1) the disposal of the new product would be similar to the disposal of cigars that are currently marketed in the United States, and (2) there would be no anticipated increase in number of cigars being disposed of as the new product is anticipated to replace similar marketed cigars.

7.5 Solid Waste

The Agency does not foresee the introduction of the new product would notably affect the current cigar tip and packaging waste generated from all cigars. The waste generated due to disposal of the new product would be handled in the same manner as any other waste generated from any other cigars disposed of in the United States. The number of cigar filter tips generated is equivalent to the market projections (Confidential Appendix 3); and a portion of those would be littered.

7.6 Socioeconomics and Environmental Justice

The Agency does not anticipate changes in impacts on socioeconomic conditions or environmental justice from disposal of the new product. The waste generated due to disposal of the new product would be handled in the same manner as the waste generated from other cigars in the United States. No new emissions are expected due to disposal of the new product; therefore, there would be no new disproportionate impacts on minority or low-income populations.

7.7 Cumulative Impacts

The use of the new product may impact the environment through littering of discarded non-combusted cigar and cigar filter tips. The environmental impacts from cigar and cigar filter tip litter is not well studied, and potentially pose similar environmental risk as cigarette butts, which can persist in the environment (Novotny and Zhao, 1999).

Like cigarettes, compounds in cigar filter tips can leach out into water, potentially threatening human health and the environment, especially aquatic and marine ecosystems (Kadir and Sarani, 2015). The environmental toxicity of cigar filter tips due to air emissions is not well studied. Airborne emissions from cigar filter tips are likely to resemble those emissions from cigarette butts. Airborne emissions after disposal of cigarette butts depend on the environmental conditions and the chemicals in the butts. These emissions can be influenced by several factors, such as the brand, length, filter material, types of tobacco, ingredients in the cigarette tobacco filler, number of puffs, and the mass transfer behavior of combustion products along the cigarette.¹⁵

However, the cumulative impacts from cigar filter tips are not of concern as TTB data shows relatively stable rate of cigar use in the United States since 2011 and the proposed action is unlikely to change that.

7.8 Impacts of the No-Action Alternative

The no-action alternative would not change the existing condition of disposal of cigars and cigar packaging, as similar tobacco products would continue to be disposed of in the United States.

8. List of Preparers

The following individuals were primarily responsible for preparing and reviewing this environmental assessment:

Preparer:

Ronald L. Edwards Jr., MS, Center for Tobacco Products

Education: MS in Biology

Experience: Twenty-four years in environmental regulation and laboratory toxicology

Expertise: Heavy metal analysis, water quality, environmental remediation, FDA, EPA, and USDA investigator

¹⁵ NIST Technical Report 8147 available at: <http://dx.doi.org/10.6028/NIST.IR.8147>. Accessed September 26, 2019.

Reviewer:

Gregory Gagliano, MS, Center for Tobacco Products

Education: MS in Environmental Science

Experience: Thirty-seven years in environmental compliance and analysis

Expertise: Environmental toxicology, risk assessment, regulatory compliance, NEPA analysis

9. A Listing of Agencies and Persons Consulted

Not applicable.

10. References

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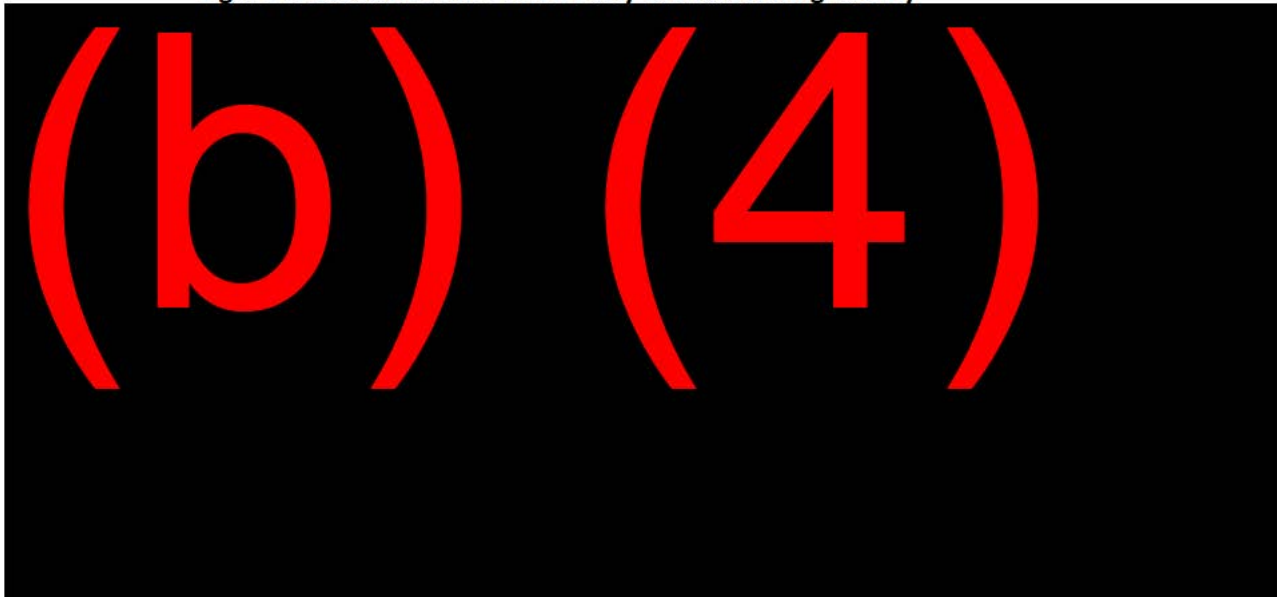
CONFIDENTIAL APPENDIX 1

Subcontracted Manufacturing Facility

Applicant Name:	Altria Client Services LLC
Applicant Address:	2325 Bells Road, Richmond, VA 23234
Third-Party Manufacturer Name:	(b) (4)
Third-Party Manufacturer Location:	
Subcontracted Manufacturer Name:	
Subcontracted Manufacturer Location:	

The third-party, subcontracted manufacturing facility is located in the **(b) (4)** industrial park, which is bounded by residential and agricultural land (Figure below). The applicant stated that the facility complies with all applicable laws and regulations and that the manufacturing contract is contingent upon the facility obtaining and maintaining all applicable permits or licenses.

Figure 3. Location of the Third-Party Manufacturing Facility¹⁶



¹⁶ Google. 2019. Map of **(b) (4)**. Retrieved from Google Maps: www.google.com/maps. September 26, 2019.

CONFIDENTIAL APPENDIX 2

Comparison of the New Product to the Predicate Product

The new product has the following differences compared to the predicate product:

STN	Change from Predicate Product
SE0015126	Increase in tipping paper weight
	Increase in filter length
	Increase in filter weight
	Decreased rod length
	Decreased rod diameter
	Decreased rod weight
	Removal of ingredients
	Replacement of (b) (4) with a lesser amount of (b) (4) for cigar wrapper and cigar binder

CONFIDENTIAL APPENDIX 3

First- and Fifth-Year Market Volume Projections for the New Product and Percentage of Cigar Use in the United States Projected to be Attributed to the New Product

First- and fifth-year market volume projections for the new product were compared to the total forecasted use of cigars in the United States.¹⁷ The new product accounts for a fraction of the forecasted cigar use in the United States. The applicant stated it does not intend to market the predicate product and the new product simultaneously if a marketing order is issued for the new product.

STN	Projected Market Volume			
	First Year		Fifth Year	
	New Product (# of Cigars)	New Product as a Percent of Total Cigars Used ¹⁸	New Product (# of Cigars)	New Product as a Percent of Total Cigars Used ¹⁹
SE0015126	(b) (4)			

¹⁷ The Agency used historical data regarding total use of cigars from 1997 to 2018 to mathematically estimate the total number of cigars used in the United States. Using the best-fit trend line with an R² value of 0.92, the forecasted number of cigarettes that would be used in the United States is estimated at 13.67 billion cigars in the first year and 13.43 billion cigarettes in the fifth year of marketing the new product.

¹⁸ Projected Market Occupation of the New Product in the United States (%) = $\frac{\text{Projected Market Volume of the New Product (cigar pieces)}}{\text{Projected Use of Cigars in United States (cigar pieces)}} \times 100$

¹⁹ Ibid.