

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill

FTC Matter No. P104518

ORDER TO FILE SPECIAL REPORT

Pursuant to a resolution of the Federal Trade Commission dated [insert], entitled “*Resolution Directing Use of Compulsory Process*,” a copy of which is enclosed, [insert target name], hereinafter referred to as “the company,”² is ordered to file a Special Report with the Commission no later than the dates specified in Appendix A.III. hereto, containing the information and documents specified herein.

The information in the Special Report will assist the Commission in its ongoing review of beverage alcohol advertising and marketing and alcohol industry self-regulatory efforts. Documents submitted in compliance with this Order that are marked “confidential” will not be disclosed without first giving you ten days’ notice of the Commission’s intention to do so, except as provided in Sections 6(f) and 21 of the FTC Act, 15 U.S.C. §§ 46(f) and 57b-2. Furthermore, no documents containing confidential commercial or financial information within the meaning of Section 6(f) of the FTC Act may be disclosed publicly without your consent.

The Special Report should restate each item of this Order with which the corresponding answer is identified. If any specification cannot fully be answered, provide the information that is available and explain in what respects and why the answer is incomplete. **The Special Report and all accompanying documentary responses should be bates-stamped.**

¹ 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 [insert].

² For purposes of this Order, the term “the company” includes all of the entities identified in response to Specification 1.B., below.

draft 12/06/2011

Please supply the information and documents requested in the following Specifications, **consistent with the Definitions and Instructions contained in Appendix A.**

SPECIFICATIONS

Specification 1. Company Background Information, Brands, and Data

Provide the following background information:

- A. Identify by full name, business address, telephone number, and official capacity, the officer of the company who has prepared or supervised the preparation of the company's response to this Order.
- B. Fully identify the entity responding to this Order by company name, address, and state of incorporation. In addition, identify each subsidiary, joint venture, affiliated company, partnership, or operation under an assumed name that is owned in whole or in part by the company and that engages in the manufacturing, labeling, advertising, promoting, offering for sale, or sale of any beverage alcohol product in the United States.
- C. Identify by name each individual beverage alcohol brand or variety sold by the entities identified in subparagraph 1.B. above, during calendar year 2011, and for each brand or variety, state total sales, net of taxes ("stripped sales"), during calendar year 2011 in dollars and in number of 9-liter or 2.25 gallon cases sold.
- D. Produce all documents dated, prepared, or received by the company on or after January 1, 2006 that contain data not otherwise publicly available regarding the demographics of persons under 21 located in the U.S. who have tasted, used, or purchased any brand manufactured, advertised, or sold by the company.

Specification 2. Expenditures

Report in Appendix B to this Order³ the dollar amount expended during calendar year 2011 by the company on the advertising, merchandising, or promotion of beverage alcohol products in the United States in each of the categories set forth below (*as defined in Appendix A.I.*):

- A. Television Advertising
- B. Radio Advertising
- C. Magazine Advertising
- D. Newspaper Advertising
- E. Transit Advertising
- F. Outdoor Advertising

³ An electronic version of Appendix B, an Excel spreadsheet, is provided on the included CD.

- G. Direct Mail Advertising
- H. Company-sponsored Internet Sites
- I. Other Internet Site Advertising
- J. Other Digital Advertising
- K. Point-of-Sale Advertising: Specialty Item Distribution
- L. Point-of-Sale Advertising: Retail Value-Added Expenditures
- M. Point-of-Sale Advertising: Other
- N. Promotional Allowances
- O. Public Entertainment Events: Not Sports-Related
- P. Sponsorship of Sporting Events, Sports Teams, or Individual Athletes
- Q. Spring Break Promotions
- R. Product Placements
- S. In-Cinema Advertising
- T. Telemarketing
- U. Sports and Sporting Events (Cross-Category)
- V. Social Responsibility Programs and Messages (Cross-Category)

Specification 3. Advertising Placements

Provide information relating to the placement of advertising:

A. With regard to procedures used by the company to facilitate compliance with the advertising placement guidelines contained in the voluntary advertising codes of the Beer Institute, the Distilled Spirits Council of the United States, and/or the Wine Institute, state:

- (i) Which of the 3 voluntary codes the company follows;
- (ii) Whether the company follows another code, such as a company code, that addresses advertising placement;
- (iii) What databases are relied on in making advertising placement decisions;
- (iv) How often post-placement data are reviewed to verify that an advertising placement complied with the guidelines, and what steps are taken if a compliance shortfall is identified; and,
- (v) What additional safeguards are in place (such as use of “no buy” lists, use of higher placement standards, media content review, or others) to reduce the likelihood that a non-compliant advertising placement will occur.

B. With regard to each instance of dissemination by the company (including the entities identified in response to Specification 1.B., above) of an advertisement during the period January 1, 2011 to June 30, 2011, on television, on radio in measured markets, in magazines, in newspapers, and on the Internet, provide on the spreadsheet included in

Appendix C to this Order⁴ the following information, *consistent with the directions in Appendix A.II*:

- (i) The advertisement's name;
- (ii) The brand advertised;
- (iii) The name of the medium and location of dissemination;
- (iv) The date and time that the advertisement appeared;
- (v) The name of the show during, or in conjunction with, which the advertisement appeared, where applicable;
- (vi) The actual demographics of the audience (number of persons under 21, and number of persons 21 and over) for that dissemination; and
- (vii) The source of the data reported.

In responding to Specification 3.B., please indicate, in the manner instructed on the spreadsheets included in Appendix C, each dissemination that was primarily targeted to Hispanic consumers and each dissemination that was primarily targeted to African-American consumers.

- C. Provide copies of all documents relied on to support the company's responses to Specification 3.B. above.

Specification 4. Digital Marketing Practices and Data Collection

Provide information relating to the following digital marketing practices:

- A. Company-owned or operated websites
 - (i) Identify by name and URL each website service operated by or on behalf of the company at any time during calendar year 2011.
 - (ii) With respect to each URL identified, please indicate what information, if any, is collected and/or maintained from a visitor to the site and by whom, including but not limited to: at the initial landing page, or during or after any registration process. Describe how such information is used to deliver advertising to consumers in the future.
 - (iii) State any restrictions or prohibitions, contractual, technological, or otherwise, on the company's and each third party's collection or use of information collected and/or maintained from a visitor to each website

⁴ An electronic version of Appendix C, which has separate Excel spreadsheets for TV National Placements, TV Regional/Local Placements, Radio Placements in 6+ PPM Markets, Radio Placements in 12+ Markets, Magazine Placements, Newspaper Placements, and Internet Placements, is provided on the included CD.

identified above.

- (iv) For each website identified, describe in detail the mechanism(s) used, if any, by the company to deter entry by persons under age 21.
- (v) Describe the company's information collection, maintenance, aggregation, and tracking practices with respect to any visitor identified as being under age 21.
- (vi) For each website identified, provide a screen shot of the site's landing page, as well screen shots for each page of the website, if any, that depicts an age-screening mechanism.
- (vii) Describe in detail any analytics or technologies used to identify or profile visitors to the website and how that information is used.

B. Other Internet sites and other digital advertising

- (i) Identify all Internet sites (other than described in Specification 4.A. above) and digital advertising campaigns (*as defined in App. A.I.J.*) promoting any of the company's brands listed in response to Specification 1.C. above at any time from January 1, 2011 to June 30, 2011. For each Internet site or digital advertising campaign identified, provide samples of (or list and describe in detail, if providing samples is not practicable), the specific advertising and/or promotional activities involved.
- (ii) With respect to each Internet site and digital advertising campaign identified, indicate what information, if any, is collected and/or maintained from any consumer of a digital advertising campaign, including but not limited to threshold information, and information collected and/or maintained during or after any registration process. Identify each entity that collects such information, and describe how such information is used to deliver advertising to consumers in the future.
- (iii) State any restrictions or prohibitions, contractual, technological, or otherwise, on the company's and each third party's collection or use of information collected and/or maintained from each Internet site and digital advertising campaign identified above.
- (iv) For each campaign identified and described in Specification 4.B.(i) above, describe in detail the mechanism(s) used, if any, by the company to deter entry by persons under age 21.
- (v) Describe the company's information collection, maintenance, aggregation, and tracking practices with respect to any consumer of an Internet site or digital advertising campaign identified as being under age 21.
- (vi) Describe in detail any analytics or technologies used to identify or profile consumers of each Internet site and digital advertising campaign identified, and how that information is used.

C. Provide all marketing or consumer research studies sponsored or commissioned

by the company since January 1, 2010 through the date of your completed response regarding digital advertising techniques, including the effectiveness of any particular types of digital advertising in increasing interest in or consumption of any of the company's brands.

Specification 5. Lesser-Known Media Program Descriptions

- A. If the company reported expenditures in Categories G (Direct Mail Advertising), J (Other Digital Advertising), K (Point-of-Sale Advertising: Specialty Item Distribution), L (Point-of-Sale Advertising: Retail Value Added), M (Promotional Allowances), O (Public Entertainment Events: Not Sports Related), P (Sponsorship of Sporting Events, Sports Teams, or Individual Athletes), Q (Spring Break Promotions), R (Product Placements), S (In-Cinema Advertising), T (Telemarketing), or V (Social Responsibility Programs and Messages), briefly describe the types of programs and events funded by efforts in each such category, as well as what efforts the company engages in to ensure that such funds are expended consistent with the voluntary advertising codes of the Beer Institute, the Distilled Spirits Council of the United States, and/or the Wine Institute.

- B. With respect to Product Placements (*as defined in App. A.I.R.*), for the period from January 1, 2011 to June 30, 2011, please identify, in the manner instructed on the spreadsheet included in Appendix D, the type of entertainment vehicle in which a product placement was made, the title of the specific entertainment vehicle, the specific brand advertised in each such placement; and any consideration or booty paid in connection with such placement. Describe in detail the mechanism(s) used, if any, by the company, to ensure that persons under age 21 were not exposed to such vehicles or product placements.

Penalties may be imposed under applicable provisions of federal law for failure to file Special Reports or for filing false reports.

The Special Report responses called for in this Order are to be filed on or before the dates set forth on Appendix A.III.

By direction of the Commission.

Chairman

draft 12/06/2011

SEAL

Date of Order:

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

Janet M. Evans

Carolyn L. Hann

Division of Advertising Practices, Federal Trade Commission

NJ-3213

Washington, D.C. 20580

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DEFINITIONS AND INSTRUCTIONS

I. Reportable Expenditure Definitions

These definitions of reportable advertising, merchandising, or promotion expenditures track the Categories set forth in Specification 2 of the Order to File Special Report. Please provide information for each Category in dollars. In responding to Specification 2, *exclude expenditures targeted to the trade*, such as expenditures for promotions in trade magazines or password-protected Internet sites targeted to the trade.

A. Television Advertising

Definition: Television advertising on broadcast, cable, or satellite channels, including spot ads, long-form commercials, and sponsored programming (such as televised events bearing the name of or stated to be sponsored by an alcohol brand or company); **allocate** such expenditures among: (a) advertising placed for national distribution on: (i) broadcast, (ii) cable, or (iii) satellite television; and (b) regional or local advertising placed on: (i) broadcast, (ii) cable, or (iii) satellite television. This Category *excludes* expenditures in connection with Product Placements (defined in Category R).

B. Radio Advertising

Definition: Radio advertising including spot ads, long-form commercials, and sponsored programming (such as radio broadcast events bearing the name of or stated to be sponsored by an alcohol brand or company); **allocate** such expenditures among: (a) advertising on subscription based satellite radio channels; (b) advertising in markets where the audience is measured by a syndicated data source (such as Arbitron); and, (c) advertising in unmeasured markets. This Category *excludes* expenditures in connection with Product Placements (defined in Category R).

C. Magazine Advertising

Definition: Advertising placed in magazines or other print media. This Category *excludes* Newspaper Advertising (defined in Category D), Direct Mail Advertising (defined in Category G), and Spring Break Promotions (defined in Category Q).

D. Newspaper Advertising

Definition: Advertising placed in newspapers, including national, regional, and local papers, and advertising placed in free-standing inserts to newspapers. This Category *excludes* expenditures for Magazine Advertising (defined in Category C), Direct Mail Advertising (defined in Category G), and Spring Break Promotions (defined in Category Q).

E. Transit Advertising

Definition: Advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, train station, airport, or any other transportation facility.

F. Outdoor Advertising

Definition: Advertising on billboards; signs, placards or posters placed on outdoor street furniture, kiosks, shopping malls (whether open-air or enclosed), pay telephone booths, parking space bumpers or other advertising in parking lots or garages, or trash receptacles; airplane banners; and, any other advertisements placed outdoors regardless of their size. This Category *excludes* expenditures in connection with Transit Advertising (defined in Category E), Point-of-Sale Advertising: Other (defined in Category M), Public Entertainment Events: Not Sports-related (defined in Category O), or Sponsorship of Sporting Events, Sports Teams, or Individual Athletes (defined in Category P).

G. Direct Mail Advertising

Definition: Advertising circulars or other printed matter that is sent directly through the mail to consumers. This Category *excludes* expenditures in connection with Magazine Advertising (defined in Category C) and Newspaper Advertising (defined in Category D).

H. Company-sponsored Internet Sites

Definition: Any company-sponsored Internet site that contains information about the company's beverage alcohol brands or beverage alcohol products, and 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* official company or brand Internet sites, company-sponsored pages (including brand pages) on social networks such as Facebook, and company-sponsored videos or channels on video-sharing sites such as YouTube.

I. Other Internet Site Advertising

Definition: Advertising on Internet sites other than company-sponsored Internet sites, including, but not limited to, the use of hyperlinks, banner or pop-up advertisements, mouseovers, streaming video, sponsored-text advertising, search keywords, and advertising in chat rooms, weblogs, bulletin boards, listservs, on social networking sites, in online virtual worlds, social gaming sites, and/or on video sharing sites.

J. Other Digital Advertising

Definition: Advertising and promotional content visible on, or that can interact with, personal computers (PC) and other digital devices, including personal digital assistants, portable media players, portable gaming devices, wireless tablet computers, or mobile phones, whether or not Internet-enabled. This Category *includes but is not limited to* expenditures for electronic mail (email) messages, short message service (SMS text) or multimedia (MMS) messaging, instant messaging (IM), microblogging (*e.g.*, tweets, twit-backs on Twitter), tell-a-friend viral messaging, picture messaging, user-generated content (such as messages, photos, or videos) that is posted by the company, bar code print ads that can interact with mobile phones, mobile broadcasts, mobile video, mobile or PC applications and widgets, games, downloads, podcasts, or “webisodes.”

K. Point-of-Sale Advertising: Specialty Item Distribution

Definition: All net costs (deducting payments by consumers) of distributing items other than beverage alcohol products, whether distributed by sale, redemption of coupons, or otherwise. **Allocate** among expenditures for items that (a) bear the name, logo, or any portion of the package of any brand or variety of beverage alcohol product sold by the company and (b) do not bear the name, logo, or any portion of the package of any brand or variety of beverage alcohol products sold by the company. *Exclude* costs associated with distributing non-alcohol items in connection with Point-of-Sale: Retail Value-added Expenditures (defined in Category L). This category *excludes* expenditures in connection with Spring Break Promotions (defined in Category Q).

L. Point-of-Sale Advertising: Retail Value-Added Expenditures

Definition: Expenditures for promotions involving: (1) free beverage alcohol products (*e.g.*, buy two, get one free), whether or not the free beverage alcohol products are physically bundled together with the purchased beverage alcohol products, including all expenditures and costs associated with the value added to the purchase of beverage alcohol products (*e.g.*, all associated excise taxes paid on the free beverage alcohol products); and (2) free non-alcohol products items (*e.g.*, buy two, get a can opener) including all expenditures and costs associated with the value added to the purchase of beverage alcohol products. This category *excludes* expenditures in connection with Spring Break Promotions (defined in Category Q).

M. Point-of-Sale Advertising: Other

Definition: Expenditures for advertising and promotions at on-premise or off-premise locations where beverage alcohol can be purchased. This Category *excludes* expenditures in connection with Point-of-Sale: Specialty Item Distribution (defined in Category K), Point-of-Sale: Retail Value-added Expenditures (defined in Category L), Public Entertainment Events: Not Sports-related (defined in Category O), Sponsorship of Sporting Events, Sports Teams, or Individual Athletes (defined in Category P), and Spring Break Promotions (defined in Category Q).

N. Promotional Allowances

Definition: Allowances paid to retailers or wholesalers/distributors for development and distribution of consumer-directed advertising and promotional efforts, but *excluding* expenditures specifically designated to be expended for advertising and promotions in Categories A-M and O-T, which expenditures should be reported in the appropriate Category. Allocate such expenditures among payments to (a) retailers and (b) wholesalers/distributors. This category *excludes* expenditures in connection with Spring Break Promotions (defined in Category Q).

O. Public Entertainment Events: Not Sports-Related

Definition: Public entertainment events that are not sports-related, such as appearances by musicians, comedians, celebrities, or other entertainers or public figures, bearing or otherwise displaying the company name or logo, the name, logo, or any portion of the package of any of the company's beverage alcohol brands, or otherwise referring or relating to beverage alcohol, including all expenditures made by the company in promoting and/or sponsoring such events; **allocate** these expenditures among (a) adult-only facilities and (b) general audience facilities. This Category *excludes* expenditures in connection with Television or Radio Advertising (defined in Categories A and B), Internet or digital programming (defined in Categories H, I, and J), Point-of-sale Advertising: Other (defined in Category M), and Sponsorship of Sporting Events, Sports Teams, or Individual Athletes (defined in Category P). "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 and includes company-sponsored private parties and event hospitality tents. 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 period in question. For purposes of this Order, the term "underage" means younger than twenty-one (21) years of age.

P. Sponsorship of Sporting Events, Sports Teams, or Individual Athletes

Definition: Sponsorship of sporting events, sports teams, or individual athletes. "Sports teams or individual athletes" includes but is not limited to competitors in football, basketball, baseball, soccer, hockey, tennis, wrestling, golf, karate, judo, weight lifting, volleyball, skiing, skating, sailing, boating, equestrian, rodeo, automobile, race car, funny car, motorcycle, bicycle, truck, monster truck, tractor-pull, fishing, and hunting events, competitions, tournaments, and races. This Category *excludes* expenditures in connection with Television and Radio Advertising (defined in Categories A and B), Internet or digital programming (defined in Categories H, I, and J), Point-of-sale Advertising: Other (defined in Category M), and Public Entertainment Events: Not Sports-related (defined in Category O).

Q. Spring Break Promotions

Definition: Expenditures for advertising and promotion of college “spring break” events, including vacation trips, cruises, beach or pool parties, and on-premise and off-premise events where beverage alcohol can be purchased.

R. Product Placements

Definition: The dollar value of consideration provided in connection with permitting, promoting, or procuring the integration of any beverage alcohol product, logo, signage, trade name, or package into a television or radio program, motion picture, music video, music recording, online virtual world, electronic game, or other form of entertainment programming; such expenditures would include, for example, the dollar value of alcohol beverages or logoed items (such as clothing or signage) provided, or expenditures by the company to cross-promote a film or program in which a placement occurs. This category *excludes* expenditures incurred to screen requests for product placements.

S. In-Cinema Advertising

Definition: Expenditures for advertising and promotions delivered prior to or in conjunction with the viewing of a motion picture in a cinema. This category *excludes* expenditures in connection with Public Entertainment Events: Not Sports-Related (defined in Category O), Product Placements (defined in Category R), or any other category listed above.

T. Telemarketing

Definition: Expenditures associated with the placement of telephone calls for the purpose of selling a good or service or the maintenance or operation of incoming telephone lines that allow consumers to participate in any promotion or hear pre-recorded product messages, but excluding costs associated with having customer service representatives available for responding to consumer complaints or questions.

U. Sports and Sporting Events (Cross-Category)

Definition: “Sports and sporting events” include but are not limited to football, basketball, baseball, soccer, hockey, golf, 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, and hunting events, competitions, tournaments, and races. Report all items including but not limited to all expenditures connected with or related to the sponsoring, advertising, or promotion of sports or sporting events, including support of an individual or a group sports or racing team, and purchase of, or support for, sports or racing equipment, uniforms, sports or racing facilities and/or training facilities, and all expenditures for advertising including but not limited to print, television, radio, billboards, or banners in the name of the company or any of its beverage alcohol products in a sports or racing

facility, on a scoreboard or in conjunction with the reporting of sports or racing results; and 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. **Allocate** among (a) expenditures for college sports and sporting events and (b) all others. The expenditures reported in this Category are intended to be duplicative of expenditures listed above for Categories A-T. For example, televised ball games sponsored by an alcohol brand, reported in Category A, and untelevised events for a sponsored sports teams, reported in Category P, would also be reported in Category U. Do not report any expenditures in this Category that have not also been reported in Categories A-T.

V. Social Responsibility Programs and Messages (Cross-Category)

Definition: Expenditures by the company to support social responsibility programs and messages. The expenditures reported in this Category may or may not be duplicative of expenditures listed for Categories A-T.

II. Audience Demographics Definitions

These instructions shall be used in responding to Specification 3.B.'s request for the *actual* demographics of the audience for an advertisement. In formatting data in response to Specification 3.B., please use the model spread sheet attached as Appendix C to this Order.

A. Television ads. Provide, for the program in which or adjacent to which the ad appeared, the quarterly average demographic data for that program in that timeslot; if program-specific data are not available, provide the quarterly average demographic data for the daypart in which the ad appeared. Thus, for ads appearing in March 2011, the company should provide the average program data for the period from January 1, 2011 to March 31, 2011. For regional or local ads, allocate the total audience reported consistent with the available national audience breakdown, where national data is available.

B. Radio ads. Provide the quarterly average demographic data for the daypart during which the ad appeared. Thus, for ads appearing in March 2011, the company should provide the average program data for the period from January 1, 2011 to March 31, 2011. In responding to this Specification, use Arbitron standard dayparts unless data for a shorter period of time is available.

C. Magazine ads. Provide average demographic data for the 12-month period during which the ad appeared, if the ad was placed in the standard national edition. Thus, for ads appearing during calendar year 2011, provide data measuring that period's audience, if available. If the ad was placed in a 21+ or other specialized edition, identify the edition and explain its demographics.

D. Newspaper ads. Provide average demographic data for the 12-month period during which the ad appeared. If the demographics of the newspaper are unmeasured, so specify.

E. Internet ads. For company-sponsored Internet sites, provide the number of unique visitors *by month* for each site for the period January 1, 2011 to June 30, 2011. For advertising on Internet sites other than company-sponsored sites, provide the average demographic data for *each month* in which the ad appeared.

III. Due Dates for Responses

Responses to this Order are due 60 days after issuance, except as follows:

A. Response to Specification 3.C.: Within 5 days following receipt from the FTC staff of a written request to provide such documents (but not before timely submission of audience composition data in response to Specification 3.B).

IV. Instructions for Production of Responses

All responses should be provided in two (2) printed copies and in electronic form (by CD, DVD, or as email attachments) and should be labeled fully to indicate the Specification to which the provided data responds. Electronic responses to Specifications 1.A., 1.B., 1.D., 3.A., 4, and 5.A should be formatted as Adobe Acrobat, Microsoft Word, or WordPerfect documents. Electronic responses to Specification 1.C. should be provided on an Excel spreadsheet. Electronic responses to Specification 2 should be provided on the Excel spreadsheet included as Appendix B to this Order. Electronic responses to Specification 3.B. should be provided on the Excel spreadsheet included as Appendix C to this Order. Electronic responses to Specification 5.B. should be provided on the Excel spreadsheet included as Appendix D to this Order.