



NCDOR

NORTH
CAROLINA
DEPARTMENT
OF REVENUE

Excise Tax Division
North Carolina Department of Revenue
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Important Notice:
**New Jenkins/PACT Act Reporting Requirements for Products
Delivered through an Aerosolized Solution and Associated
Devices**

On December 27, 2020, the federal government enacted the Preventing Online Sales of E-Cigarettes to Children Act, which amends the Jenkins Act¹ (the “Act”). The Act was also previously amended by the Prevent All Cigarette Trafficking Act of 2009, often referred to as the PACT Act. The PACT Act imposed certain filing requirements for persons engaged in interstate commerce with respect to cigarettes and smokeless tobacco.

The 2020 amendment to the Act extends its applicability to e-cigarettes, vaping products, and all other products that are delivered through an aerosolized solution and associated devices. The amendment modifies the original definition of “cigarette” to include electronic nicotine delivery systems (“ENDS”). The term ENDS is defined very broadly to include **all** vaping products, liquids, components, and accessories, regardless of whether they contain nicotine. Specifically, an ENDS product is defined as “any electronic device that, through an aerosolized solution, delivers nicotine, flavor, **or any other substance** to the user inhaling from the device,” including, but not limited to:

1. an e-cigarette;
2. an e-hookah;
3. an e-cigar;
4. a vape pen;
5. an advanced refillable personal vaporizer;
6. an electronic pipe; and
7. any component, liquid, part, or accessory of a device described above, without regard to whether the component, liquid, part, or accessory is sold separately from the device.

¹ 15 U.S.C. §§ 375 et seq.

An ENDS product does not include devices that have been approved by the Food and Drug Administration and which are marketed and sold solely for: (1) use as a tobacco cessation product; or (2) any other therapeutic purpose.

Based on this definition of ENDS, zero-nicotine e-liquids, synthetic “tobacco-free” nicotine e-cigarettes, and CBD/THC/hemp vape pens, would be subject to the Act.

Reports to be filed with North Carolina under the Jenkins/PACT Act

The Act requires a person to file certain information with states if the person: (1) sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce; or (2) advertises or offers cigarettes or smokeless tobacco for sale, transfer, or shipment. With the addition of ENDS products to the definition of cigarettes, more persons are subject to the Act’s reporting requirements. In accordance with 15 U.S.C. § 376, to comply with state reporting requirements under the Act, persons subject to the reporting requirement must do all of the following:

1. “[F]ile . . . with the tobacco tax administrators of the State and place into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth [the] name and trade name (if any), and the address of [the] principal place of business and of any other place of business, as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of the person[.]”²
2. “[N]ot later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes or smokeless tobacco made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code[.]”³
3. “[W]ith respect to each memorandum or invoice filed with a State under [item 2. above], also file copies of the memorandum or invoice with the tobacco tax administrators and chief law enforcement officers of the local governments and Indian tribes operating within the borders of the State that apply their own local or tribal taxes on cigarettes or smokeless tobacco.”⁴

² 15 U.S.C. § 376(a)(1).

³ 15 U.S.C. § 376(a)(2).

⁴ 15 U.S.C. § 376(a)(3).

How to File Jenkins/PACT Act Reports with North Carolina

A person may file information required by the Act by sending it to the following e-mail address:

NCPactActDeliverySales@ncdor.gov

A person filing information for North Carolina required by the Act may use Form PA-1 and PA-2. These forms are maintained by the Federation of Tax Administrators and can be accessed at the following address:

https://www.taxadmin.org/assets/docs/Tobacco/New%20PA-1%20%20PA-2%20PACT%20Act%20Reports_REV%203Mar2021.pdf

North Carolina Reporting Requirements for Delivery Sales

A person making delivery sales must comply with the Act and N.C.G.S. 105-113.4F. The Department previously issued a notice for delivery sales of certain tobacco products. It can be accessed at the following address:

https://files.nc.gov/ncdor/documents/files/Updated_11_4_2019_Notice-Informational_Delivery-Sales.pdf

A person required to report a delivery sale pursuant to N.C.G.S. 105-113.4F may satisfy the reporting requirements by filing Form B-A-10, "Report of Delivery Sales of Certain Tobacco Products (other than cigars)." A delivery seller who complies with the reporting requirements of 15 U.S.C. § 376 is considered to have complied with the filing requirements of N.C.G.S. 105-113.4F(c), and the delivery seller is not required to file Form B-A-10.

Questions regarding this notice may be directed to the Excise Tax Division at telephone number (919) 707-7500 or toll free (877) 308-9092.

If a written response would require the Department to interpret the law in a manner not specifically addressed in a statute, regulation, or Departmental or IRS publication, the person requesting the written response must follow the procedure (and pay the required fee) for requesting a private letter ruling available on the Department's website at the following address:

<https://www.ncdor.gov/documents/nc-481-request-written-determination>.