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FREQUENTLY ASKED QUESTIONS REGARDING THE NORTH CAROLINA VAPOR PRODUCTS AND CONSUMABLE PRODUCTS CERTIFICATION AND DIRECTORY

Summary

Session Law 2024-31 (HB 900) creates a new regulatory system that requires manufacturers to seek certification for vapor products and consumable products with the Department of Revenue before those products can be sold in North Carolina. Manufacturers are required to complete an electronic certification form demonstrating that the manufacturer has complied with the applicable federal law related to the vapor products and consumable products and pay the required fees. The new law also creates a new public directory available online which will list the vapor products and consumable products that have been certified for sale in this state by the North Carolina Department of Revenue.

Beginning on May 1, 2025, only vapor products and consumable products listed on the directory are authorized for retail sale in North Carolina. Retailers have a 60-day grace period for compliance, to either sell the vapor or consumable products not listed on the directory or return the vapor or consumable products not listed on the directory to the manufacturer. The retailer grace period ends June 29, 2025.

The frequently asked questions and responses covered in this document are the following:

Frequently Asked Question – Microsoft Excel Requirements

Question 1: What spreadsheet and versions should I use to download the North Carolina Vapor Products and Consumable Products Directory?

Frequently Asked Questions – Certification and Directory

Question 2: What is the Vapor Products and Consumable Products Directory?

Question 3: What are vapor products and consumable products?

Question 4: Would a vapor product or consumable product that contains hemp derived products be subject to the North Carolina Vapor Products and Consumable Products Certification and Directory?

Question 5: What are the requirements for vapor products or consumable products to be included in the North Carolina Vapor Products and Consumable Products Directory?

Question 6: Who must complete the electronic certification form?

Question 7: How does a manufacturer complete the electronic certification form?

- Question 8: I do not have FDA or Court issued documentation. Is it okay to submit the certification form without it?
- Question 9: What should I do if a product is denied certification due to lack of documentation, but I find the documentation at a later date?
- Question 10: Where do I find the North Carolina Vapor Products and Consumable Products Directory?
- Question 11: How do I attach supporting documentation? Can I attach multiple documents?
- Question 12: The electronic certification form only allows for 10 products to be certified. I have (30) thirty products. What can I do?
- Question 13: How frequently is the directory updated by the North Carolina Department of Revenue?
- Question 14: Does the manufacturers certification of vapor products and consumable products expire?

Frequently Asked Questions – Financial Information

- Question 15: What is the fee for the initial certification?
- Question 16: Is there a fee for renewals?
- Question 17: How will I pay the fees associated with the electronic certification process?
- Question 18: What is a wire transfer and how do I complete one?
- Question 19: What happens if I do not send the money to pay the certification fees?
- Question 20: I did not meet the deadline to renew my products – what happens now?
- Question 21: My company is located outside the United States, and I do not have a FEIN. How do I complete the electronic certification form without a FEIN?
- Question 22: What if I need to add another product in the same certification year?

Frequently Asked Questions – Manufacturer and Importer Information

- Question 23: I am a manufacturer located outside North Carolina. What are my duties and responsibilities under this law?
- Question 24: I am an importer of vapor products from a manufacturer outside the United States. What are my duties under this new law?
- Question 25: What is a registered agent?
- Question 26: I want to change my registered agent. What must I do?
- Question 27: What shall I do if the registered agent terminates their contract with me?
- Question 28: What does a manufacturer do in the event changes need to be made to their demographics?
- Question 29: Where should a manufacturer send written correspondence?

Question 30: After the initial certification, can I add additional products and/or update existing products?

Question 31: Where can I go for more information?

Frequently Asked Questions – Penalties and Compliance Issues

Question 32: What are the penalties for selling products not listed in the directory?

Question 33: I am a wholesaler located in North Carolina. I sell vapor products to North Carolina retailers as well as retailers in states other than North Carolina. May I maintain inventory intended for retail sale in other states that has not been certified for sale in North Carolina?

Questions (Q) & Answers (A)

Frequently Asked Questions Regarding the North Carolina Vapor Product and Consumable Product Certification and Directory

Q1:	What spreadsheet and versions should I use to download the North Carolina Vapor Product and Consumable Product Directory?
A1:	For the best user experience, North Carolina Department of Revenue strongly recommends Microsoft Excel 2016 upwards to Microsoft Excel 2023/Microsoft 365. Use of prior versions of Microsoft Excel and other spreadsheets may have limited functionalities.

Q2:	What is the Vapor Product and Consumable Product Directory?
A2:	The North Carolina Vapor Product and Consumable Product Directory is a list of vapor products and consumable products as reported by their manufacturers and reviewed by the North Carolina Department of Revenue staff that can be legally sold at retail in North Carolina.

Q3:	What are vapor products and consumable products?
A3:	<p>A vapor product is any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a consumable product. The term includes an electronic cigarette, electronic cigar, electronic cigarillo, and electronic pipes. The term doesn't not include hemp or hemp products as defined in G.S. 90-87.</p> <p>A consumable product is any <i>nicotine liquid solution</i> or other material <i>containing nicotine</i> that is depleted as a vapor product is used. The term does not include any hemp or hemp products as defined in G.S. 90-87.</p>

Q4:	Would a vapor product or consumable product that contains hemp derived products be subject to the North Carolina Vapor Product and Consumable Product Certification and Directory?
A4	<p>No, to be subject to the provisions of this new law (found in HB-900, SL 2024-31) the product must contain nicotine. The definition of consumable product as provided in G.S. 105-113.4(1k) states: "Any nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used." HB 900 adds the following clarification: For purposes of this section, a consumable product does not contain any tobacco leaf.</p> <p>A vapor product must contain a consumable product. Pursuant to G.S. 14-313(a)5, a consumable product must contain nicotine. Hemp products do not contain nicotine.</p>

Q5:	What are the requirements for vapor products and consumable products to be included in the North Carolina Department of Revenue Vapor Product and Consumable Product Directory?
A5:	<p>To be included in the North Carolina Vapor Product and Consumable Product Directory the manufacturer of the product must complete the electronic certification form and attach documentation to verify the status of product with the FDA or Court Order. These are the acceptable documents:</p> <ul style="list-style-type: none"> A. A timely filed premarket tobacco order (PMTA) pursuant to federal law and the PMTA remains under review by the FDA; or B. A denial order but the agency or federal court has issued a stay order or injunction during the manufacturers appeal, or the order has been appealed and remains pending, or C. A marketing order or other authorization under federal law from the FDA. <p>Additionally, the manufacturer must submit an initial certification fee of \$2,000 to have the products certified and listed in the directory. To remain in the directory the manufacturer must submit the annual renewal fee of \$500 no later than March 1 of each subsequent year.</p>
Q6:	Who must complete the electronic certification form?
A6:	Every manufacturer of vapor products and consumable products sold for retail sale in North Carolina, whether directly or indirectly through a distributor, retailer, or similar intermediaries, is required to complete the electronic certification process for those products to appear in the North Carolina Department of Revenue Vapor Product and Consumable Product Directory.
Q7:	How does a manufacturer complete the electronic certification form?
A7:	The form must be completed electronically. The certification form is found on the North Carolina Department of Revenue's website at the following link: https://www.ncdor.gov/vapor-certification-directory . The manufacturer will provide a list of product names, brand names, categories, flavors and the SKU (stock keeping unit) for each vapor product or consumable product. A manufacturer must also submit documentation to verify the current status of each product by attaching the correspondence from the FDA or Court Order to the certification form. The label of the attachment must contain the SKU of the product to be certified.
Q8:	I do not have FDA or Court issued documentation. Is it okay to submit the certification form without it?
A8:	No. Vapor products and consumable products cannot be certified unless the appropriate FDA or Court issued documentation is attached with the certification form.
Q9:	What should I do if a vapor product or consumable product is denied certification due to lack of documentation, but I find the documentation at a later date?
A9:	You should re-submit the vapor product or the consumable product and attach the proper documentation. The North Carolina Department of Revenue staff will determine if there is enough documentation to certify the vapor product or consumable product.
Q10:	Where do I find the North Carolina Vapor Product and Consumable Product Directory?
A10:	The directory is found on the North Carolina Department of Revenue's website at the following link: https://www.ncdor.gov/vapor-certification-directory .

Q11:	How do I attach supporting documentation? Can I attach multiple documents?
A11:	You will locate the section of the electronic certification form that states: "Attachments". In the box below is the phrase "Attach copies of supporting documentation", you will click on the rectangle with the verbiage "Supporting Documentation" and follow the directions to attach your document. Please label each document with the SKU for that document. For example, the supporting document for the first vapor or consumable product in your list should be labeled: Product 1 – SKU# 333444. For the next product you should label it: Product 2 – SKU# 333445 and so on until all the vapor or consumable products have their documentation properly labeled and attached. You can only list 10 documents per form. You may enter comments for the documents in the comment section below. Comments may be helpful to the North Carolina Department of Revenue's staff reviewing your documents.
Q12:	The electronic certification form only allows for 10 vapor products or consumable products to be certified. I have (30) thirty products. What can I do?
A12:	Each certification form only allows for ten vapor products or consumable products to be listed. You would list the first ten vapor products or consumable products and attach the FDA or Court issued documentation to that form. You must attach the certification for each of the 10 vapor products or consumable products you are going to certify. You would start a new form for the next ten vapor or consumable products and continue listing each vapor or consumable product and attaching the documentation for each vapor product or consumable product that you want to certify. Be sure to attach the documents and name them according to question 10 above. Each form only allows for 10 vapor products or consumable products but you may complete as many forms as you need to list all your vapor products or consumable products.
Q13:	How frequently is the directory updated by the North Carolina Department of Revenue?
A13:	The North Carolina Department of Revenue updates the directory monthly.
Q14:	Does the manufacturers' certification of vapor products or consumable products expire?
A14:	The manufacturers certification of its products expires each year on March 1. The certifications must be renewed each year prior to March 1 to ensure that the vapor products or consumable products remain in the directory and may be legally sold in North Carolina.
Q15:	What is the fee for the initial certification?
A15:	There is a fee of \$2,000 per manufacturer initial certification to have its vapor products and consumable products listed for publication in the North Carolina Vapor Product and Consumable Product Directory.
Q16:	Is there a fee for renewals?
A16:	There is a \$500 fee for certification renewal per manufacturer. A manufacturers certification of its vapor products and consumable products expires each year on March 1. A manufacturer must renew its certification for each vapor product and consumable product prior to March 1 to ensure that the vapor products and consumable products remain in the directory. The renewal process is similar to the initial certification process – the form is the same and located at the same website, https://www.ncdor.gov/vapor-certification-directory , simply change the status to renewal, and list the vapor products and consumable products. The manufacturer must attach copies of the FDA documentation or a Court Order. Any change in the FDA or Court Order status must be noted.

Q17:	How will I pay the fees associated with the electronic certification process?
A17:	Fees must be paid electronically. Manufacturers must set up an electronic funds transfer account for their electronic certification and renewal payments. Please contact the North Carolina Department of Revenue at telephone number (919) 707-7500 or toll free (877) 308-9092 Option 4 to set up an account. All fees must be paid in U.S. Dollars.
Q18:	What is a wire transfer and how do I complete one?
A18:	A wire transfer is needed when a manufacturer does not have a bank in the United States. <u>A wire transfer is an electronic transfer of funds</u> via a network that is administered by banks and transfer service agencies around the world. Wire transfers are sent by one financial institution and received by another. To arrange for a wire transfer you need to contact North Carolina Department of Revenue at the following phone number 919-707-7500 Option 4 or toll free 877-308-9092 Option 4.
Q19:	What happens if I do not send the money to pay the certification fees?
A19:	If a manufacturer fails to remit the money for the certification fees, those vapor products or consumable products will not be listed in the directory and will be prohibited from retail sale in North Carolina.
Q20:	I did not meet the deadline to renew my vapor products or consumable products – what happens now?
A20:	If a manufacturer does not meet the March 1 annual deadline to renew its certification, the manufacturer's vapor products and consumable products will be removed from the directory and may not be sold at retail in North Carolina. The manufacturer will need to complete the initial certification form and remit the initial certification fee of \$2,000 (per manufacturer).
Q21:	My company is located outside the United States, and I do not have a FEIN. How do I complete the electronic certification form without a FEIN?
A21:	North Carolina requires a unique identifying number for each manufacturer. If you do not have a FEIN you may substitute any other unique identifying number. The number may be up to nine digits in length and <u>must</u> be unique to you. Numbers such as 99999999 or 123456789 will not be accepted as they are not unique to the person. <i>Certification fees must be paid electronically.</i>
Q22:	What if I need to add another product in the same certification year?
A22:	<p>Updates to existing vapor products or consumable products (ad hoc changes) do not require an additional fee. If you have completed your initial certification and need to add an additional vapor product or consumable product there is no additional fee. Remember, the fee is per manufacturer, not per vapor product or consumable product.</p> <p>If for some reason you must drop a vapor product or consumable product you can make this change in the electronic certification form. You should also send an email to the North Carolina Department of Revenue's staff at vaporcertification@ncdor.gov and alert them to the change. There would be no additional charge for dropping a vapor product or consumable product.</p>
Q23:	I am a manufacturer located outside North Carolina. What are my duties and responsibilities under this law?
A23:	A manufacturer of vapor products and consumable products is responsible for completing the electronic certification form to have its vapor products or consumable products listed in the North Carolina Vapor Product and Consumable Product Directory. A manufacturer located

	outside North Carolina that is not registered with the North Carolina Secretary of State's office must obtain and maintain a registered agent in North Carolina. Additionally, a manufacturer located outside the United States, as a condition precedent to having its name or its vapor products or consumable products listed and retained in the directory must obtain and continually maintain a registered agent in North Carolina. A manufacturer located outside the US must provide a list of all its importers and is also responsible to ensure that its importers retain and maintain a registered agent in North Carolina. All obligations of a manufacturer imposed with respect to appointment of an agent shall also apply to the importers with respect to appointment of their agents.
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Q24:	I am an importer of vapor products and consumable products from a manufacturer outside the United States. What are my duties under this new law?
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A24:	An importer of vapor products or consumable products is responsible to ensure that any vapor products or consumable products imported into North Carolina for retail sale are listed in the North Carolina Vapor Product and Consumable Product Directory. Only vapor products or consumable products listed in the directory are eligible for sale at retail in North Carolina. Also, an importer not registered with the North Carolina Secretary of State's office, must obtain and retain a registered agent in North Carolina. An importer is required to notify the North Carolina Department of Revenue if the agent is terminated by either party.
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Q25:	What is a registered agent?
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A25:	A registered agent is a person or business designated to receive service of process and other official documents by mail or in-person on behalf of a company. North Carolina requires that vapor and consumable products manufacturers located outside North Carolina that are not registered with the North Carolina Secretary of State's office retain and maintain a registered agent in North Carolina. Additionally, a vapor and consumable manufacturer located outside the United States must retain and maintain a registered agent in North Carolina.
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Q26:	I want to change my registered agent. What must I do?
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A26:	A manufacturer must provide written notice to the North Carolina Department of Revenue thirty (30) calendar days prior to the termination of the authority of a registered agent. No less than five calendar days prior to the termination of the authority of an existing registered agent, a manufacturer shall provide to the North Carolina Department of Revenue the name, address, and telephone number of the newly appointed registered agent.
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Q27:	What shall I do if the registered agent terminates their contract with me?
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A27:	In the event a registered agent terminates a manufacturer's contract, the manufacturer shall notify the North Carolina Department of Revenue, in writing, within five (5) calendar days. The manufacturer shall also include proof, to the satisfaction of the North Carolina Department of Revenue, of the newly appointed registered agent.
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Q28:	What does a manufacturer do if it needs to change its demographics?
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A28:	If a manufacturer needs to edit their contact information, they shall submit the changes in writing via email to the North Carolina Department of Revenue at: vaporcertification@ncdor.gov .
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Q29:	Where should a manufacturer send written correspondence?
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A29:	Written correspondence may be sent via email to vaporcertification@ncdor.gov . If a hardcopy of the correspondence is requested by the North Carolina Department of Revenue, it should be mailed to: North Carolina Department of Revenue – Excise Tax Division 3301 Terminal Drive – Suite 125 Raleigh, NC 27604
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Q30:	After the initial certification, can I add additional products and/or update existing products?
A30:	Yes, you may add additional vapor products or consumable products after the initial certification through the electronic certification form located at https://www.ncdor.gov/vapor-certification-directory . You must go to the area on the form that states, "Request Type" and select the type of request you want to make. The choices are: Certification; Renewal; Add more products to be certified; Update to existing products. Make your selection here and proceed with entering the information. You must ensure that you attach supporting documentation as needed.

Q31:	Where can I go for more information?
A31:	If you feel you need more information about the certification process or the directory you may review the Administrative Rules for the North Carolina Vapor Product and Consumable Product Certification and Directory. You can find this information by going to 17 NCAC 04C section .2000 rules.pdf

Q32:	What are the penalties for selling vapor products or consumable products not listed in the directory?
A32:	<p>The following penalties shall apply to vapor and consumable products not listed in the directory:</p> <ol style="list-style-type: none"> 1. A retailer, distributor, or wholesaler who offers for sale a vapor or consumable product intended for retail sale in North Carolina that is not included in the directory is subject to a warning with a mandatory re-inspection of the retailer within 30 days of the violation. 2. For a second violation of this type within a 12-month period, the fine shall be at least five hundred dollars (\$500) but not more than seven hundred fifty dollars (\$750) and, if licensed, the license shall be suspended for 30 days 3. For a third or subsequent violation of this type with in a 12-month period, the five shall be at least one thousand dollars (\$1,000) but not more than one thousand fifty dollars (\$1,500) and if licensed, the license shall be revoked. 4. Upon a second or subsequent violation of this type, vapor products or consumable products that are not in the directory as required by law, and are possessed by a retailer, distributor, or wholesaler, shall be subject to seizure, forfeiture, and destruction. The cost of such seizure, forfeiture, and destruction, shall be borne by the person from whom the products were confiscated, except that no products may be seized from a customer who has made a bona fide purchase of the product. <p>A manufacturer whose vapor products or consumable products are not listed in the directory as required by law and who causes these products to be sold for retail sale in North Carolina, whether directly or indirectly through an importer, distributor, wholesaler, retailer, or similar intermediary or intermediaries, is subject to a civil penalty of ten thousand dollars (\$10,000) for each individual product offered for sale in violation of Part 3 of Article 4 of Chapter 143B of the North Carolina General Statutes until the offending product is removed from the market or until the offending product is certified and added to the directory. In addition, any manufacturer that falsely represents any information required by the certification form shall be guilty of a misdemeanor for each false representation.</p> <p>A repeated violation of Part 3 of Article 4 of Chapter 143B of the North Carolina General Statutes shall constitute a deceptive trade practice under Chapter 75 of the North Carolina General Statutes. (North Carolina's unfair and deceptive trade practice laws are a robust mechanism for protecting consumers and businesses from unethical practices.)</p>

Q33:	I am a wholesaler located in North Carolina. I provide vapor products to both North Carolina retailers as well as retailers in states other than North Carolina. May I maintain inventory intended for retail sale in other states that has not been certified for sale in North Carolina?
A33:	Yes, you may maintain inventory intended for retail sale outside North Carolina. Pursuant to NC GS 143B-245.13.(2), "each distributor or wholesaler shall have 60 days from the date the Secretary first makes the directory available for inspection on its public website to remove those products intended for ultimate retail sale in the State from its inventory." Accordingly, a wholesaler who has both products intended for retail sale in North Carolina and products intended for retail sale in other states must keep those products separated. A good practice might be to label those products intended for retail sale outside North Carolina "Not for Retail Sale in North Carolina".

Assistance and Advisement

All questions regarding this document may be directed to the Excise Tax Division at telephone number (919) 707-7500 or toll free (877) 308-9092 Option 4. To the extent there is any change to a statute or regulation, or new case law after the date of this document, the provisions in this notice may be superseded or voided. 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>.