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## Important Notice: Vapor Product and Consumable Product Certification and Directory

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The following important information is addressed in this notice:

- Vapor product and consumable product certification and effective date for manufacturers;
- Certification requirements for manufacturers;
- When Vapor and Consumable Products Directory will publicly be available;
- Additional requirements for out-of-state manufacturers and importers of manufacturers located outside the United States;
- Compliance, fines and civil penalties;
- Manufacturers must set up electronic payment account with the Department.

### VAPOR PRODUCT AND CONSUMABLE PRODUCT CERTIFICATION AND EFFECTIVE DATE

The North Carolina General Assembly enacted Session Law 2024-31 (H 900), requiring manufacturers of vapor products and consumable products sold for retail in North Carolina to annually execute and deliver a certification to the Secretary of Revenue. Additionally, the new law requires the Secretary of Revenue to develop, maintain, and make publicly available a directory listing all manufacturers of vapor products and consumable products that have provided compliant certifications, including brands, categories, and flavors of products,

Beginning March 1, 2025<sup>1</sup>, and annually thereafter, every manufacturer of vapor products and consumable products sold for retail in North Carolina, whether directly or through an intermediary, shall execute a certification to the Secretary of Revenue for all such products. Only vapor products and consumable products of manufacturers certified by the Department of Revenue and placed on the Vapor and Consumable Products Directory may be sold in North Carolina.

### CERTIFICATION REQUIREMENTS

To become certified, the manufacturer must electronically complete the Vapor and Consumable Products Certification form found at <https://www.ncdor.gov/vapor-certification-directory> and verify each product's standing with the Food and Drug Administration (FDA) by providing documentation showing one of the following:

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<sup>1</sup> N.C. Gen. Stat. § 143B-245.11

(1) The manufacturer received an order granted pursuant to 21 U.S.C. § 387j(c) (marketing granted order) for the vapor product or consumable product from the FDA.

(2) The manufacturer submitted a Timely Filed Premarket Tobacco Product Application as defined in G.S. 14-313(a)(3c) for the vapor product or consumable product; and the application either remains under review by the FDA or has received a denial order that has been and remains stayed by the FDA or court order, rescinded by the FDA, or vacated by a court.

(3) The manufacturer is exempt from the requirements of subdivision (1) or (2) of this subsection because the vapor product or consumable product only reflects changes to the name, brand style, or packaging of a vapor product or consumable product. An initial certification fee of \$2,000 per manufacturer is required for the processing of the certifications. Each manufacturer must renew the certification of their vapor and consumable products annually by March 1. The annual renewal fee is \$500 per manufacturer.

### **WHEN VAPOR AND CONSUMABLE PRODUCTS DIRECTORY WILL BE PUBLICLY AVAILABLE**

Beginning May 1, 2025<sup>2</sup>, the Department of Revenue will make publicly available on its website a directory listing all manufacturers of vapor and consumable products that have complied with the certification process. The Vapor and Consumable Products Directory will provide a list of the products, including brands, categories, and flavors of products, that may be sold in North Carolina and will be updated monthly.

Retailers of vapor and consumable products shall have 60 days from the date the Secretary first makes the Vapor and Consumable Products Directory available for public inspection to sell products in its inventory that do not appear in the directory, or remove those products from inventory and return them to the distributor or wholesaler from whom the products were purchased for a refund.

Distributors or wholesalers of vapor and consumable products shall have 60 days from the date the Secretary first makes the Vapor and Consumable Products Directory available for public inspection to remove those products intended for ultimate retail sale in North Carolina from its inventory.

After 60 calendar days following publication of the first Vapor and Consumable Products Directory, vapor products or consumable products not listed in the directory **may not be purchased or sold for retail sale in North Carolina.**

### **ADDITIONAL REQUIREMENTS FOR OUT-OF-STATE MANUFACTURERS AND IMPORTERS OF MANUFACTURERS LOCATED OUTSIDE THE UNITED STATES<sup>3</sup>**

A manufacturer of vapor products or consumable products that is not registered to do business in North Carolina shall, as a condition precedent to having its name and products listed and retained in the Vapor and Consumable Products Directory, appoint a registered agent in this State for service of process. The registered agent shall process and be served with any action or proceedings arising out of the enforcement of this directory.

A manufacturer located outside of the United States shall require each of its importers of any of its products to be sold in the State to appoint, and continually engage without

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<sup>2</sup> N.C. Gen. Stat. § 143B-245.12

<sup>3</sup> N.C. Gen. Stat. § 143B-245.14

interruption, the services of a registered agent in this State, as a condition precedent to having its products listed or retained in the directory. The registered agent shall process and be served with any action or proceedings arising out of the enforcement of this directory.

A manufacturer shall provide written notice to the Secretary of Revenue 30 calendar days prior to the termination of the authority of a registered agent. Within five calendar days prior to the termination of the existing agent, the manufacturer shall provide to the Secretary of Revenue the name, address, and phone number of its newly appointed registered agent. In the event an agent terminates the existing appointment, the manufacturer shall notify the Secretary of Revenue of the termination within five calendar days and shall include proof of the appointment of a new registered agent.

## **COMPLIANCE**

Pursuant to N.C. Gen. Stat. § 143B-245.15 each retailer, distributor, and wholesaler that sells or distributes vapor products or consumable products in this State shall be subject to unannounced compliance checks by the Secretary of Revenue or its designee, which may include State and local law enforcement officials, for the purpose of enforcement. Noncompliant retailers, distributors, and wholesalers shall be subject to unannounced follow-up inspections within 30 days of any violation.

## **FINES AND CIVIL PENALTIES<sup>4</sup>**

The following penalties shall apply to violations of the certification requirements for vapor products and consumable products intended for ultimate retail sale in NC that are not included in the directory.

A retailer, distributor, or wholesaler who offers for sale a vapor product or consumable product intended for ultimate retail sale in this State that is not included in the directory is subject to the following fines and civil penalties:

1. First violation– subject to a warning with a mandatory reinspection within 30 days.
2. Second violation within a twelve month period– subject to a fine of at least \$500 but no more than \$750 and, if licensed, the licensee's license shall be suspended for 30 days.
3. Third or subsequent violation within 12-month period– subject to a fine of at least \$1,000 but no more than \$1,500 and, if licensed, the licensee's license shall be revoked.
4. Upon a second or subsequent violation, vapor products or consumable products possessed by a wholesaler, distributor, or retailer that are not on the directory are subject to seizure, forfeiture, and destruction. The person from whom the products are confiscated shall be responsible for the cost of such actions.

A manufacturer who allows vapor products or consumable products not listed in the Vapor and Consumable Products Directory to be sold for retail sale in North Carolina, whether directly or through an importer, distributor, wholesaler, retailer, or similar intermediary, is subject to a civil penalty of ten thousand dollars (\$10,000) for each individual product offered

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<sup>4</sup> N.C. Gen. Stat. § 14-313.(h)

for sale.

In addition, any manufacturer who falsely represents any information required by a certification form shall be guilty of a misdemeanor for each false representation.

Repeated violations of Part 3 of Article 4 of Chapter 143B of the General Statutes shall constitute a deceptive trade practice under Chapter 75 of the North Carolina General Statutes.

### **CERTIFICATION AND RENEWAL FEES MUST BE PAID ELECTRONICALLY**

Manufacturers must set up an electronic funds transfer account for their electronic certification and renewal payments. Please contact the Department at telephone number (919) 707-7500 or toll free (877) 308-9092 Option 4 to set up an account.

### **ASSISTANCE**

General questions regarding this notice should be directed to the Excise Tax Division at telephone number (919) 707-7500 or toll free at (877) 308-9092 Option 4).

*To the extent that there is any change in statute or regulation, or new case law subsequent to the date of this notice, the provisions in this important notice may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance regarding sales and use tax issued prior to the date of this notice conflicts with this important notice, the provisions contained in this important notice supersede.*