

Burgos, Alexander N

Subject: FW: [External] Request for oral comment - 1/30/2025 RRC meeting

From: Nancy P. Larrimore <Nancy.Larrimore@ncdor.gov>

Sent: Tuesday, January 28, 2025 2:53 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Cc: Panza, John D <john.panza@ncdor.gov>; Milak, Alexander J <Al.Milak@ncdor.gov>; Lansford, Laura L <Laura.Lansford@ncdor.gov>

Subject: RE: [External] Request for oral comment - 1/30/2025 RRC meeting

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Good afternoon Mr. Ascher,

We will just be available to answer any questions that may be presented.

Respectfully,

Dr. Nancy P. Larrimore
Revenue Administration Officer III
North Carolina Department of Revenue
Excise Tax Division
Office: 919.634.1444
Email: Nancy.Larrimore@ncdor.gov



This email may contain data classified as confidential and must only be used by the intended recipient(s) for authorized business purposes. If you received this message in error, immediately contact the Sender to report the error and verify that the message has been deleted without further action. Notify the Chief Information Security Officer by contacting the Service Desk at (919) 754-2323 of any suspected unauthorized disclosures of confidential information (especially Confidential Federal Tax Information) to unintended recipients.

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Tuesday, January 28, 2025 2:23 PM

To: Nancy P. Larrimore <Nancy.Larrimore@ncdor.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Cc: John D. Panza <John.Panza@ncdor.gov>; Alexander J Milak <Al.Milak@ncdor.gov>; Laura L. Lansford <Laura.Lansford@ncdor.gov>

Subject: Re: [External] Request for oral comment - 1/30/2025 RRC meeting

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Dr. Larrimore,

Would you or one of your coworkers like to be recognized to speak on these rules? Or just be available if there are any questions?

If someone is planning to speak, our chair likes to have their name to introduce them. But that is not necessary if you just want to speak if there are any questions.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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Burgos, Alexander N

Subject: FW: [External] Response to RFC Rules 17 NCAC 04C .2001, .2003, .2004, and .2005

From: Nancy P. Larrimore <Nancy.Larrimore@ncdor.gov>

Sent: Thursday, January 23, 2025 1:16 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lansford, Laura L <Laura.Lansford@ncdor.gov>; Panza, John D <john.panza@ncdor.gov>; Milak, Alexander J <Al.Milak@ncdor.gov>; Chewning, Christie <christie.chewning@ncdor.gov>

Subject: RE: [External] Response to RFC Rules 17 NCAC 04C .2001, .2003, .2004, and .2005

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CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Thank you, sir.

Burgos, Alexander N

Subject: FW: [External] Response to RFC Rules 17 NCAC 04C .2001, .2003, .2004, and .2005

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Thursday, January 23, 2025 11:18 AM

To: Larrimore, Nancy P <Nancy.Larrimore@ncdor.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lansford, Laura L <Laura.Lansford@ncdor.gov>; Panza, John D <john.panza@ncdor.gov>; Milak, Alexander J <Al.Milak@ncdor.gov>; Chewning, Christie <christie.chewning@ncdor.gov>

Subject: Re: [External] Response to RFC Rules 17 NCAC 04C .2001, .2003, .2004, and .2005

Thank you for your timely and thorough responses. I have reviewed your changes and I anticipate recommending approval of the revised rules at next week's meeting. I'll let you know if anything changes before then.

Let me know if you have any questions.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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Burgos, Alexander N

From: Nancy P. Larrimore <Nancy.Larrimore@ncdor.gov>
Sent: Wednesday, January 22, 2025 1:32 PM
To: Rules, Oah
Cc: Ascher, Seth M; Burgos, Alexander N; Lansford, Laura L; Panza, John D; Milak, Alexander J; Chewning, Christie
Subject: [External] Response to RFC Rules 17 NCAC 04C .2001, .2003, .2004, and .2005
Attachments: RFC Department of Revenue Jan 2025.docx; 17 NCAC 04C .2003.docx; 17 NCAC 04C .2004.docx; 17 NCAC 04C .2005 .docx

Importance: High

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CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

On behalf of the Excise Tax Division of the Department of Revenue, please accept this email with attachments in response to four (4) Requests for Changes submitted to the Division by Mr. Ascher on 1/14/2025, for Rules 17 NCAC 04C .2001, .2003, .2004, and .2005, and with a response due date of COB 1/23/2025.

Please let me know if additional information is required.

Respectfully,

Dr. Nancy P. Larrimore
Revenue Administration Officer III
North Carolina Department of Revenue
Excise Tax Division
Office: 919.634.1444
Email: Nancy.Larrimore@ncdor.gov



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Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;, and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
<https://www.oah.nc.gov/rule-format-examples>

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .2001

DEADLINE FOR RECEIPT: Thursday, January 23, 2025

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Applicable to whole ruleset: *I am aware that the tobacco industry is heavily regulated by federal law. Are these rules consistent with existing federal regulations?*

DOR Response:

These rules are consistent with the FDA's regulation of electronic nicotine delivery systems (ENDS) generally, and specifically with the FDA's premarket tobacco product application for ENDS (See: 86 FR 55300 and 84 FR 50566 as published in the Federal Register on October 5, 2021 and September 25, 2019 respectively). Additionally, the rules are consistent with federal regulations found in 21 CFR Parts 1100, 1107, and 1114.

S.L. 2024-31 requires vapor product manufacturers to execute a certification to the Secretary of DOR regarding the status of the vapor manufacturers' premarket tobacco product application (PTPA) with the FDA. If a vapor manufacturer did not file a PTPA with the FDA, the manufacturer is prohibited from selling its products in North Carolina.

Regarding item (f), I see that the statute regarding these rules uses the vapor product definition in G.S. 14, as reflected in your rule. Can you provide any context for why the two definitions in statute and what the difference is?

DOR Response:

The content of the two definitions are congruous. However, the definition of vapor product found in Chapter 14 is condensed relating specifically to youth access to tobacco products, and now to vapor product manufacturer certification. The intent of Chapter 105 is expressly for the purpose of taxation. Therefore, Chapter 105 expands upon the term to include intended use of similar products or devices in an effort to bridge a gap that would allow circumvention of tax laws and tax evasion.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel

Date submitted to agency: January 14, 2025

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .2003

DEADLINE FOR RECEIPT: January 23, 2025

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 15, is the intent for the fee to be paid through the website? If so, no change. If not, clarify.

DOR Response:

The Department's intent is for the fee to be paid through the website.

On line 16: the website listed is currently the front page for the department of revenue. Do you intend to have something on the front page to lead to this payment and registration? If not, include a more specific weblink.

DOR Response:

See proposed new link to appropriate website.

<https://www.ncdor.gov/taxes-forms/tobacco-products-tax>

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .2004

DEADLINE FOR RECEIPT: January 23, 2025

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*On line 4, consider adding “certifying manufacturers **of vapor products**”. While this is included in the definition of the term from .2001, including the detail at the beginning of this rule makes it more readable.*

DOR Response:

See proposed rule change adding recommended language.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .2005

DEADLINE FOR RECEIPT: January 23, 2025

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What is a “material change to the certification”? This phrase appears on lines 4, 7, and 9.

I recognize the phrase “material change to the certification,” comes from statute. However, it is unclear precisely what this means. As I understand it, the “certification” is the document itself and not the underlying product. Does this mean a “change material to the certification.”?

Alternatively, consider defining a “material change” in this rule.

DOR Response :

See proposed rule change defining “material change”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

17 NCAC 04C .2003 is adopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

17 NCAC 04C .2003 CERTIFICATION

(a) Initial Certification Application - Beginning March 1, 2025, each certifying manufacturer shall electronically submit to the Department an initial certification application. The certifying manufacturer shall also electronically submit to the Department the initial certification fee at the time a certifying manufacturer submits the initial certification application.

(1) Manufacturers of vapor products or consumable products, offered for sale in this State prior to March 1, 2025, shall submit the initial certification application and initial certification fee by April 15, 2025.

(2) Manufacturers of vapor products or consumable products, who intend to offer products for sale in this State after March 1, 2025, shall submit the initial certification application and initial certification fee prior to shipping any vapor products or consumable products to a retailer, distributor, or wholesaler in this State for the purpose of making retail sales.

(b) The initial certification application and initial certification fee shall be completed through the Department's website at the following link: [www.ncdor.gov](https://www.ncdor.gov/taxes-forms/tobacco-products-tax) <https://www.ncdor.gov/taxes-forms/tobacco-products-tax>.

(c) The initial certification application shall include the following information:

(1) the manufacturer's legal business name or assumed name for sole proprietors, business mailing address, daytime telephone number, fax number, and email address;

(2) federal employer identification number (FEIN) or social security number for proprietorships;

(3) a contact person, including that person's legal name, telephone number, fax number, and e-mail address.

(4) a designation of whether the manufacturer is requesting an initial certification or updating information to a previously submitted application;

(5) the seven-digit Secretary of State identification number assigned by the North Carolina Secretary of State when the manufacturer registered its business entity to do business in the State.

(6) the name, address, telephone number, fax number, and email address of a registered agent as required in 17 NCAC 04C .2006;

(7) a manufacturer located outside of the United States shall list the importers of any of the manufacturer's products to be sold in this State, as well as the name, address, telephone number, fax number, and email address of the importers registered agent.

1 8) a list of each vapor product or consumable product that is sold in this State to include the brand
2 name, category (e.g., e-liquid, power unit, device, e-liquid cartridge, e-liquid pod, disposable),
3 product name, product code or stock-keeping unit (SKU), and flavor; and
4 (9) the Food and Drug Administration (FDA) tracking number and order date for each vapor
5 product and consumable product offered by the manufacturer, and shall upload a copy of:
6 (A) the marketing granted order issued by the FDA pursuant to 21 U.S.C. § 387j;
7 (B) the acceptance letter issued by the FDA pursuant to 21 U.S.C. § 387j for a Timely
8 Filed Premarket Tobacco Product Application; or
9 (C) a document issued by the FDA or by a court confirming that the premarket tobacco
10 product application has received a denial order that is not yet in effect and remains
11 stayed or rescinded by FDA or vacated by a court; and
12 (10) the total certification fee due and remitted.
13 (d) Failure to submit the required information for the initial certification application or the initial
14 certification fee will result in a denial of the application and exclusion from the vapor product and
15 consumable product directory, pursuant to G.S. 143B-245.12(b). If an initial certification application is
16 denied pursuant to a provision of G.S. 143B-245.12(b), the certifying manufacturer shall electronically
17 resubmit to the Department a new initial certification application and initial certification fee.
18 (e) Failure to submit the initial certification application or initial certification fee to the Department 15-
19 days prior to the first of each month, when the Department makes the vapor product and consumable product
20 directory available for public inspection on the Department's website, will result in a manufacturer's
21 products offered for sale to be prohibited from retail sale in this State, pursuant to G.S. 143B-245.13 until
22 the manufacturer becomes certified.

23
24 History Note: Authority G.S. 143B-245.11; 143B-245.12; 143B-245.13; 143B-245.16;
25 Eff. March 1, 2025.
26
27

1 17 NCAC 04C .2004 is adopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2
3 **17 NCAC 04C .2004 ANNUAL CERTIFICATION RENEWAL**

4 (a) Beginning January 1, and not later than March 1, of each subsequent year, certifying manufacturers of
5 vapor products shall electronically submit to the Department an annual renewal application. The certifying
6 manufacturer shall also electronically submit to the Department the annual renewal fee at the time a
7 certifying manufacturer submits the annual renewal application.

8 (b) The annual certification renewal application and annual renewal fee shall be completed through the
9 Department's website at the following link: www.ncdor.gov.

10 (c) The annual certification renewal application shall include the following information:

11 (1) the manufacturer's legal business name or assumed name for sole proprietors, business mailing
12 address, daytime telephone number, fax number, and email address;

13 (2) federal employer identification number (FEIN) or social security number for proprietorships;

14 (3) a contact person, including that person's legal name, telephone number, fax number, and e-mail
15 address.

16 (4) a designation of whether the manufacturer is requesting a renewal certification or updating
17 information to a previously submitted application;

18 (5) the seven-digit Secretary of State identification number assigned by the North Carolina
19 Secretary of State when the manufacturer registered its business entity to do business in the
20 State.

21 (6) the name, address, telephone number, fax number, and email address of the registered agent as
22 required in 17 NCAC 04C .2006;

23 (7) a manufacturer located outside of the United States shall list the importers of any of the
24 manufacturer's products to be sold in this State, as well as the name, address, telephone number,
25 fax number, and email address of the importers registered agent.

26 (8) a list of each vapor product or consumable product that is sold in this State to include the brand
27 name, category (e.g., e-liquid, power unit, device, e-liquid cartridge, e-liquid pod, disposable),
28 product name, product code or stock-keeping unit (SKU), and flavor; and

29 (9) the Food and Drug Administration (FDA) tracking number and order date for each vapor
30 product and consumable product offered by the manufacturer, and shall upload a copy of:

31 (A) the marketing granted order issued by the FDA pursuant to 21 U.S.C. § 387j;

32 (B) the acceptance letter issued by the FDA pursuant to 21 U.S.C. § 387j for a Timely

33 Filed Premarket Tobacco Product Application; or

(C) a document issued by the FDA or by a court confirming that the premarket tobacco product application has received a denial order that is not yet in effect and remains stayed or rescinded by FDA or vacated by a court; and

(10) the total certification fee due and remitted.

(d) The certifying manufacturer shall submit the annual renewal application and annual renewal fee to the Department during the annual renewal period to be timely. Failure of a certifying manufacturer to renew its certification or remit the annual renewal fee with the Department shall result in the expiration of the manufacturer's certification and exclusion from the vapor product and consumable product directory, pursuant to G.S. 143B-245.12(b).

(e) If a certifying manufacturer's certification expires, the certifying manufacturer shall electronically submit to the Department a new initial certification application and initial certification fee as set out in 17 NCAC 04C .2003, to be recertified.

History Note: Authority G.S. 143B-245.11; 143B-245.12; 143B-245.13; 143B-245.16;
Eff. March 1, 2025.

1 17 NCAC 04C .2005 is adopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2
3 **17 NCAC 04C .2005 MATERIAL CHANGES TO CERTIFICATION**

4 (a) Pursuant to G.S. 143B-245.11(e), certifying manufacturers shall notify the Department of any material
5 change to the certification. A material change is any change in the criteria found under G.S. 143B-245.11(a),
6 G.S. 143B-245.11(c), or a change as described in G.S.143B-245.11(e). Certifying manufacturers shall
7 electronically submit the changes to the Department through their original initial certification application.
8 There is no fee to update a certification. Certifying manufacturers shall notify the Department not more
9 than 30 days after any material change to the certification.

10 (b) Failure to notify the Department of a material change to a certification may result in removal of the
11 certifying manufacturer or its vapor products or consumable products from the directory.

12
13 *History Note:* Authority G.S. 143B-245.11; 143B-245.12; 143B-245.16;
14 Eff. March 1, 2025.

Burgos, Alexander N

From: Nancy P. Larrimore <Nancy.Larrimore@ncdor.gov>
Sent: Wednesday, January 15, 2025 5:47 AM
To: Ascher, Seth M; Lansford, Laura L
Cc: Burgos, Alexander N
Subject: [External] RE: RFC for Department of Revenue: January 2025

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Thank you, Mr. Ascher.

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, January 14, 2025 3:48 PM
To: Nancy P. Larrimore <Nancy.Larrimore@ncdor.gov>; Laura L. Lansford <Laura.Lansford@ncdor.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RFC for Department of Revenue: January 2025

CAUTION: This email originated from outside of the organization. Do not click links or attachments unless you recognize the sender.

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Department of Revenue for the January 2025 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, January 30, 2025, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit your responses, the revised Rules, and forms to me via email, no later than 5 p.m. on January 23, 2025.

Please let me know if you have any questions or concerns.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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