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Changes Upcoming to PACT-Regulated Product Reporting and Shipments

Companies that import, market and distribute vaping products will see significant changes to their businesses due to a major modification in the scope of products subject to the Prevent All Cigarette Trafficking (PACT) Act. The Consolidated Appropriations Act, 2021, which was signed into law on December 27, 2020, adds “electronic nicotine delivery system” to the definition of a “cigarette” in 15 U.S.C. 375(2)(A). The definition of an electronic nicotine delivery system is broadly worded to cover “any electronic device that, through an aerosolized solution, delivers nicotine, flavor, or any other substance to the user inhaling from the device,” and includes:

- i. an e-cigarette;
- ii. an e-hookah;
- iii. an e-cigar;
- iv. a vape pen;
- v. an advanced refillable personal vaporizer;
- vi. an electronic pipe; and
- vii. any component, liquid, part, or accessory of a device...without regard to whether the component, liquid, part, or accessory is sold separately from the device.

15 U.S.C. 375(7)

Products determined to be included in the definition of an electronic nicotine delivery system are subject to a number of registration, labeling, delivery, tax, reporting and record-keeping requirements, which include:

Registration of any person who advertises, offers, sells, transfers or ships for profit electronic nicotine delivery systems with The Bureau of Alcohol, Tobacco, Firearms and Explosives and the tobacco tax administrators of each state where shipments are made or advertisements or offers are disseminated.

Monthly reporting about shipments made in the previous month to each state's tobacco tax administrator.

Providing the following statement on all bills of lading and shipping packages:

Cigarettes/Smokeless Tobacco: Federal Law Requires the Payment of all Applicable Excise Taxes, and Compliance with Applicable Licensing and Tax-Stamping Obligations.

Confirmation by the common carrier or other delivery service of the legal age of the person accepting delivery of a consumer purchase through a valid, government-issued, photo identification.

Limits on the weight of a single sale to a consumer to 10 pounds and prohibiting consumer deliveries through the U.S. Postal Service. Sellers to consumers must also obtain the full name, birth date, and residential address of the consumer and verify the provided information using a commercially available database for age and identity authentication.

Payment of excise taxes to the state for consumer sales.

What this means to you

These changes are set to start on March 28, 2021, with regulations from the U.S. Postal Service expected by April 26, 2021. Given the breadth of the definition, we are assisting a range of companies affected by these changes. Any business involved in any aspect of the vaporizer industry, whether business-to-business, cannabis-based liquid products, vaporizer accessories or nicotine e-liquids, should review their business operations and develop a strategy to address the PACT Act requirements. Our Cannabis, Food Safety & Regulation, and International Trade & Supply Chain teams are available to assist with this planning.

Contact us

If you have questions on how upcoming changes to PACT requirements impact your business, contact Seth Mailhot or your Husch Blackwell attorney.