

I have several comments on the tobacco regulations.

1. I have clients that are retailers, pharmacies, and/or healthcare providers that sell/dispense only OTC smoking cessation drugs, but do not sell tobacco products. Their understanding is that they will not need to register as they do not sell tobacco products. The OTC smoking cessation drugs contain trace amounts of nicotine, but do not contain tobacco. Further public policy dictates that these FDA regulated items (unlike vape products) intended to reduce the use of tobacco, should not be included in tobacco product registration requirements. This position is supported by the FDA's definition of "tobacco product" which specifically excludes products defined as a "drug" (i.e., products approved by FDA under a new drug application, such as smoking cessation drugs).

For your backup, FDA definition of "tobacco product" is contained here:

<https://www.law.cornell.edu/uscode/text/21/321>

(rr)

- (1)The term "tobacco product" means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).
- (2)The term "tobacco product" does not mean an article that is a drug under subsection (g)(1), a device under subsection (h), or a combination product described in section 353(g) of this title.

2. Is an LLC an association for purposes of what information appears on the applications?
3. Are the same officers listed on tobacco applications as the principal officers listed for liquor licenses? There are 20-30 officers listed on the SOS website for some corporations (lots of VPs, assistant secretaries and assistant treasurers). I would hate to list all of those individuals and then have to update those lists for tobacco licenses constantly. The definition of officer in the ABC liquor regulations was crafted to avoid listing and fingerprinting officers who have nothing to do with NM or liquor licensing. (For example, there are corporate secretaries whose job is almost exclusively dealing with the SEC and setting up shareholder meetings)
4. It would be nice to define principal directors and principal officers in the same way. Perhaps any officer or director who resides in NM should be deemed to have control over NM sales, subject to proof otherwise.
5. The tobacco legislation states that registered agents must be listed on the applications. Do you intend, via these regulations, to interpret registered agent to be resident agents like those required for liquor licenses? Or are the registered agents for service of process of lawsuits listed in addition to resident agents?
6. I have a request for the resident agent forms. Could there be 2 separate pages (one for appointment of the RA and different one for acceptance by the resident agent) AND/OR could you eliminate the need for notarization? This form is constantly completed incorrectly. Because there is a notarization on the top half of the form and another at the bottom, applicants notarize in the wrong place or only complete one notarization. Because this form is submitted as an original, it takes some real time to start over for corrections. The officer who appoints the resident agent is out of state and must sign again on corrected form and then send it to the NM resident agent and then it is sent to me. Two separate forms and/or deletion of the notaries would help a lot. None of the applications submitted to the SOS require a notarization.

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