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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF COMMUNITY BASED CARE SERVICES

Bureau of Drug and Alcohol Services

Jeffrey A. Meyers
Commissioner

105 PLEASANT STREET, CONCORD, NH 03301
603-271-6738 1-800-804-0909

Kathleen A. Dunn
Associate Commissioner
& Medicaid Director

Fax: 603-271-6105 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

February 10, 2016

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services, Bureau of Drug and Alcohol Services to amend a Memorandum of Understanding with the New Hampshire State Liquor Commission, Concord, New Hampshire, Vendor #177913 B001, that provides surveillance and related activities, for youth access to and use of tobacco products, by increasing the price limitation by \$10,000 from \$100,000 to an amount not to exceed \$110,000, effective upon on the date of Governor and Executive Council approval, through June 30, 2017, with no change to the completion date of June 30, 2017. The original agreement was approved by Governor and Executive Council on June 24, 2015 (Item #24). 100% Other, Drug Forfeiture Funds.

Funds are available in State Fiscal Years 2016 and 2017 in the following accounts, with authority to adjust encumbrances between State Fiscal Years through the Budget Office if needed and justified, without approval from Governor and Executive Council.

05-95-49-491510-29880000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, HHS: DIV OF COMM BASED CARE SVC, BUREAU OF DRUG & ALCOHOL SVCS, PREVENTION SERVICES

Class/Account	Class Title	State Fiscal Years	Current Budget Amount	Increase/Decrease Amount	Revised Budget Amount
049-584977	Transfer to Other State Agencies	2016	\$50,000	\$0	\$50,000
049-584977	Transfer to Other State Agencies	2017	\$50,000	\$0	\$50,000
		Subtotal	\$100,000	\$0	\$100,000

05-95-49-491510-29920000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, HHS: DIV OF COMM BASED CARE SVC, BUREAU OF DRUG & ALCOHOL SVCS, DRUG FORTEITURE FUNDS.

Class/Account	Class Title	State Fiscal Years	Current Budget Amount	Increase/Decrease Amount	Revised Budget Amount
102-500734	Contracts for Prog Svc	2016	\$0	\$5,000	\$5,000
102-500734	Contracts for Prog Svc	2017	\$0	\$5,000	\$5,000
		Subtotal	\$0	\$10,000	\$10,000
		Grand Total	\$100,000	\$10,000	\$110,000

EXPLANATION

This Amendment adds Drug Forfeiture Funds to the Agreement, to reimburse the New Hampshire State Liquor Commission for their enforcement activities such as writing citations, time spent preparing for Synar inspections, fulfilling any court-related duties, and mandating merchant education when a merchant is found selling tobacco to a minor during a Synar inspection. The Drug Forfeiture Funds are not federal or state general funds. They are other funds collected by the State of New Hampshire from drug raids or other like events. Synar inspection is an unannounced inspection, by a Liquor Enforcement Officer, of merchants who sell tobacco products. The Enforcement Officer conducts surveillance activities during an inspection to monitor that sales are not being made to minors (under the age of 18).

Additionally, this Amendment adds language to the Memorandum of Understanding to clarify that the funding provided by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration to conduct the Synar inspection, cannot be used to compensate for the enforcement activities described above.

This Memorandum of Understanding provides surveillance and related activities, for youth access to and use of tobacco products. The goal of these surveillance activities is to reduce the amount of sales by tobacco retailers to minors statewide as well as provide education around the dangers of tobacco use. The Department enters into a Memorandum of Understanding with the New Hampshire State Liquor Commission because they are the state agency that has conducted these tobacco surveillance checks since State Fiscal Year 2012. The Bureau of Drug and Alcohol Services in partnership with Division of Liquor Enforcement is tasked with reducing the sales by retailers to minor statewide to below 20%.

Should Governor and Executive Council determine not to approve this request, New Hampshire will not be in compliance with the federal Substance Abuse and Mental Health Services Administration requirement to conduct Synar inspections and to reduce sales to minors. Should New Hampshire not meet the Substance Abuse and Mental Health Services Administration requirements, then the Department would lose federal funding.

Area Served: Statewide.

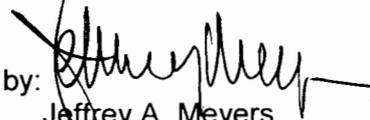
Sources of Funds: 100% Other, Drug Forfeiture Funds.

Respectfully submitted,



Kathleen A. Dunn, MPH
Associate Commissioner

Approved by:



Jeffrey A. Meyers
Commissioner



**State of New Hampshire
Department of Health and Human Services
Amendment #1 to the
Surveillance and Related Activities for Youth Access to and Use of Tobacco Products
Memorandum of Understanding**

This first Amendment to the Surveillance and Related Activities for Youth Access to and Use of Tobacco Products Memorandum of Understanding (hereinafter referred to as "Amendment #1") dated December 11, 2015, is by and between the State of New Hampshire, Department of Health and Human Services, Bureau of Drug and Alcohol Services (hereinafter referred to as "BDAS") and New Hampshire State Liquor Commission (hereinafter referred to as the "Commission"), a governmental entity with a place of business at 57 Regional Drive, Suite 8, Concord, NH 03301.

WHEREAS, pursuant to an agreement approved by the Governor and Executive Council on June 24, 2015 (Item #24) (hereinafter referred to as the Memorandum of Understanding (MOU)), the Commission agreed to perform certain services based upon the terms and conditions specified in the Contract and in consideration of certain sums specified; and

WHEREAS, the BDAS and the Commission have agreed to make changes to the scope of work, payment schedules and terms and conditions of the contract; and

WHEREAS, pursuant to the MOU, "The MOU may be amended in writing by both parties during the effective period," and Section 3.3, "This MOU may be modified in writing at any time by mutual consent of both parties;" and

WHEREAS, BDAS and the Commission agree to increase the price limitation and add language to the Memorandum of Understanding, with no change to the completion date.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Contract and set forth herein, the parties agree as follows:

1. Except as specifically amended and modified by the terms and conditions in this Amendment #1, the obligations of the parties shall remain in full force and effect in accordance with the terms and conditions set forth in the Contract as referenced above.
2. Delete in its entirety, Section 3.2 that reads:

3.2. Funds for this MOU are available to the Commission in the amount of \$50,000.00 for SFY 2016 and \$50,000.00 for SFY 2017 for a total of \$100,000.00 for use by its Division of Enforcement.

And replace with:

3.2 Funds for this MOU are available to the Commission in the amount of \$55,000.00 for SFY 2016 and \$55,000.00 for SFY 2017 for a total of \$110,000.00 for use by its Division of Enforcement.

3. Add section 5. to read:

5. This MOU is funded with federal funds from the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Substance Abuse Prevention and Treatment Block Grant, Catalog of Federal Domestic Assistance (CFDA) #93.959.

**New Hampshire Department of Health and Human Services
Surveillance and Related Activities for Youth Access to and Use of Tobacco Products**

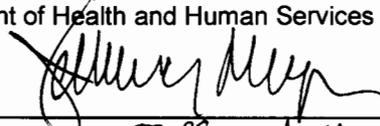


- 5.1. The Commission shall provide services in accordance with the above CFDA number.
 - 5.2. The Commission shall not use Substance Abuse Prevention and Treatment Block Grant funds to compensate for the time of any law enforcement officer beyond the time spent conducting an actual Synar inspection.
 - 5.3. The Commission shall not use Substance Abuse Prevention and Treatment Block Grant funds to compensate for time spent preparing for Synar inspections, completing paperwork, or fulfilling any court-related duties.
4. Add Section 6 to read:
6. The Commission shall conduct enforcement activities in accordance with the Revised Statutes Annotated (RSA) Chapter 126-K: Youth Access to and Use of Tobacco Products, such as, but not limited to, writing a citation and mandating merchant education to the clerk when there is a sale of tobacco to minor during a compliance check.
 - 6.1. The Commission shall provide to BDAS invoice documentation monthly with the name of the Liquor Enforcement Officer, the date, the amount of time (hours and/or minutes), a brief description of the enforcement activity and the name of the merchant.
 - 6.2. Of the total amounts in Section 3.2, BDAS shall reimburse the Commission for said enforcement activities in Section 6, up to \$5,000 per State Fiscal Years 2016 and 2017.
 - 6.3. The enforcement activities are funded with 100% Other, Drug Forfeiture funds.

This amendment shall be effective upon the date of Governor and Executive Council approval.

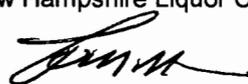
IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

2/22/16
Date

State of New Hampshire
Department of Health and Human Services


Jeffrey A. Meyers
Commissioner

1/21/16
Date

New Hampshire Liquor Commission


Joseph Mollica
Chairman

**New Hampshire Department of Health and Human Services
Surveillance and Related Activities for Youth Access to and Use of Tobacco Products**



The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

3/3/14
Date


Name: Megan A. Cole
Title: Attorney General

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: _____ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:
Title:

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF MEDICAID BUSINESS AND POLICY

Nicholas A. Toumpas
Commissioner

129 PLEASANT STREET, CONCORD, NH 03301-3857
603-271-9422 1-800-852-3345 Ext. 9422
Fax: 603-271-8431 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

Kathleen A. Dunn
Associate Commissioner

June 8, 2015

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services, Bureau of Drug and Alcohol Services to enter into a Memorandum of Understanding with the New Hampshire State Liquor Commission, Concord, New Hampshire, Vendor #177913 B001, to continue to provide surveillance and related activities, for youth access to and use of tobacco products, in an amount not to exceed \$100,000, effective July 1, 2015 or upon Governor and Executive Council approval, whichever is later, through June 30, 2017. 100% Federal Funds.

Funds are anticipated to be available in State Fiscal Years 2016 and 2017 in the following account, upon the availability and continued appropriation of funds in the future operating budget, with authority to adjust encumbrances between State Fiscal Years through the Budget Office if needed and justified, without approval from Governor and Executive Council.

05-95-49-491510-29880000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, HHS: DIV OF COMM BASED CARE SVC, BUREAU OF DRUG & ALCOHOL SVCS, PREVENTION SERVICES

State Fiscal Years	Class/Account	Class Title	Total Amount
2016	049-584977	Transfer to Other State Agencies	\$50,000
2017	049-584977	Transfer to Other State Agencies	\$50,000
Total			\$100,000

EXPLANATION

Approval of this Memorandum of Understanding will allow the Department to continue to provide surveillance and related activities, for youth access to and use of tobacco products. The goal of this service is to reduce the amount of sales by tobacco retailers to minors statewide as well as provide education around the dangers of tobacco use. The Department enters into a Memorandum of Understanding with the New Hampshire State Liquor Commission because they are the state agency that has conducted these tobacco surveillance checks since SFY 2012. The Bureau of Drug and Alcohol Services in partnership with Division of Liquor Enforcement is required by the Substance

Abuse Prevention and Treatment Block Grant with reducing the non-compliance rate among tobacco retailers selling tobacco products to minors below 20%.

This Memorandum of Understanding also includes partnering with the Comprehensive Synar Planning Group to assist with compliance checks and other strategies throughout the state. The Comprehensive Synar Planning Group in New Hampshire is a requirement of the federally mandated Synar Program (named after the Congressman who sponsored the program) under the Substance Abuse Prevention and Treatment Block Grant. The purpose of this group is to provide comprehensive planning approaches to decreasing tobacco use and sales to minors in New Hampshire. This group includes members from the Department of Health and Human Services, Liquor Commission as well as other State and local entities.

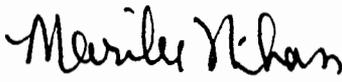
Should Governor and Executive Council determine not to approve this request, New Hampshire will not be in compliance with the Substance Abuse Prevention and Treatment Block Grant requirements to reduce the amount of sales by tobacco retailers to minors and would be at risk of losing the federal funds awarded to the Department.

Area Served: Statewide.

Sources of Funds: 100% Federal funds from the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Substance Abuse Prevention and Treatment Block Grant. Catalog of Federal Domestic Assistance #93.959 Federal Award Identification Number #3B08T1010035-14S1.

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,


for Kathleen A. Dunn, MPH
Associate Commissioner

Approved by: 
Nicholas A. Toumpas
Commissioner



**MEMORANDUM OF UNDERSTANDING
THE NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES
BUREAU OF DRUG AND ALCOHOL SERVICES
129 Pleasant Street
Concord NH 03301**

AND

**THE NEW HAMPSHIRE STATE LIQUOR COMMISSION
57 Regional Drive, Suite 8
Concord, NH 03301**

Whereas, THIS MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU") entered into by and between the New Hampshire State Liquor Commission (hereinafter referred to as "Commission") and the Department of Health and Human Services, Bureau of Drug and Alcohol Services (hereinafter referred to as "BDAS"); and

Whereas, the purpose of this MOU is to continue increasing surveillance and related activities, for youth access to and use of tobacco products under (RSA 126:K). This Memorandum of Understanding (MOU) shall be effective July 1, 2015 or date of Governor and Council approval, whichever is later, and shall remain in effect through June 30, 2017, unless terminated by either party in writing. The MOU may be amended in writing by both parties during the effective period.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Memorandum of Understanding and set forth herein, the parties hereto agree as follows:

1. The activities to be performed under this memorandum include the following:
 - 1.1. The New Hampshire State Liquor Commission will:
 - 1.1.1. Support the statutory authority and mission of RSA 126:K, The Youth Access to and Use of Tobacco. The purpose of this law is to protect the children of New Hampshire from the possibility of addiction, disability, and death resulting from the use of tobacco products by ensuring that tobacco products will not be supplied to minors.
 - 1.1.1.1. Under RSA 126:K, no person under 18 years of age shall purchase, attempt to purchase, possess, or use any tobacco product, and no person shall sell, give, or furnish or cause or allow or procure to be sold, given, or furnish tobacco products to a minor.
 - 1.1.2. Provide Law Enforcement Activities as follows:
 - 1.1.2.1. Enforce the youth access to tobacco laws.
 - 1.1.2.2. Reduce non-compliance among tobacco retailers selling tobacco products to minors to below 20%.
 - 1.1.2.3. Reduce access and availability of tobacco products to minors.
 - 1.1.2.4. Partner with the Comprehensive Synar Planning Group to assist with compliance checks and other strategies throughout the state.
 - 1.1.2.5. Determine the direction of the law enforcement efforts conducted pursuant to this MOU and shall perform all of its duties in a manner consistent with New Hampshire law and Constitutional protections.



- 1.1.2.6. Comply with the New Hampshire Division of Liquor Enforcement and Licensing Administration & Operation Manual A-130 that describes performance procedures and goals for enforcement are made part of the terms and conditions of this MOU and are attached hereto as Attachment A.
- 1.1.3. Develop a plan to perform state-wide comprehensive, year-round tobacco retailer compliance checks;
- 1.1.4. Complete state-wide comprehensive, compliance checks in accordance with federal guidelines;
- 1.1.5. Develop a data-system to track compliance check progress and results, with regular reports to BDAS on progress;
- 1.1.6. Work with BDAS to format and submit data for required and requested federal reports;
- 1.1.7. Submit year-round compliance checks data for required yearly federal reports;
- 1.1.8. Report on other youth tobacco access enforcement activities (youth possession);
- 1.1.9. Participate in the establishment a Youth Tobacco Access Advisory Board, in conjunction with BDAS to:
 - 1.1.9.1. Publicize compliance checks results;
 - 1.1.9.2. Develop methods to enhance retailer and community tobacco law education;
 - 1.1.9.3. Develop activities and initiatives related to youth tobacco prevention including, but not limited media campaigns, Buyer's Beware campaigns, and youth initiatives.
- 1.1.10. Work with the Advisory Board and BDAS to expend funds not dedicated to enforcement to support the components and activities of the Preventing Youth Access to Tobacco (PYATT) state plan, aka the Comprehensive Synar plan, and the activities of the Advisory Board in relation to the plan.
- 1.1.11. Provide supervision for the law enforcement operations applied to the enforcement of the youth access to tobacco laws for both criminal and administrative action. The Commission's tobacco enforcement efforts and all personnel hired, either in whole or in part, with funding made available to the Division of Liquor Enforcement pursuant to this MOU shall be controlled by the Commission via its Division of Enforcement.
- 1.1.12. Provide reports and records for all administrative and criminal cases, investigative reports, arrest reports, and buy audit reports.
- 1.1.13. Review and process all reports and maintain all evidence in a manner consistent with Attachment A.
- 1.1.14. Compile and furnish monthly reports, as directed by BDAS, and other data as required to BDAS documenting its activities as supported by funds transferred via this MOU.
- 1.1.15. Collaborate with BDAS as requested to develop databases and/or statistical programs for measuring progress or for other reporting needs.
- 1.2. The Bureau of Drug and Alcohol will provide the Liquor Commission's Division of Liquor Enforcement with the Substance Abuse and Mental Health Services Administration form to be completed by the by the Liquor Commission's Division of Liquor Enforcement.

2. LIABILITY

The parties agree that BDAS shall not be liable for any of the actions taken by the Commission or The Division of Enforcement either directly or indirectly as a result of this MOU.

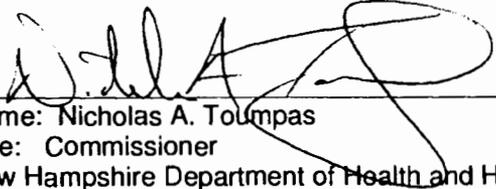


3. DURATION, MODIFICATION AND TERMINATION OF AGREEMENT
- 3.1. This MOU is subject to the availability of funds appropriated through the biennial budget process. This MOU can be re-negotiated and approved bi-annually beginning State Fiscal Year 2012, if funds are available to the Division of Enforcement.
 - 3.2. Funds for this MOU are available to the Commission in the amount of \$50,000.00 for SFY 2016 and \$50,000.00 for SFY 2017 for a total of \$100,000.00 for use by its Division of Enforcement.
 - 3.3. This MOU may be modified in writing at any time by mutual consent of both parties.
 - 3.4. In the event of an early termination of this MOU for any other reason than the completion of services, Division of Enforcement shall deliver to BDAS, not later than fifteen (15) days after than the termination a report, (the "Termination Report") describing in detail all services performed and the MOU funds used up to and including the date of termination. To the extent possible, the form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any other Final Report described within.
 - 3.5. In the event that changes in either State or Federal laws or regulations occur which render the performance of the activities set forth in this MOU illegal, void, impractical or impossible for the Division of Enforcement, this MOU shall terminate immediately and automatically. Within thirty (30) days of the effective date of the termination, BDAS shall reimburse the Commission for all activities that were performed under this agreement prior to the date of termination.
4. TRANSFER OF FUNDS
- 4.1. BDAS shall reimburse the Commission, via inter-agency transfers, up to a maximum total payment defined in paragraph 3.2 above, and based on quarterly expenditure reports.
 - 4.2. The Commission shall file quarterly expenditure reports with BDAS within (15) working days following the end of the quarter during which services are provided. These funds shall be for the sole purpose of increasing surveillance and related activities, for youth access to and use of tobacco products, and the supporting activities as described above, and the reports must adhere to a pre-approved budget detailing the expenditures associated with the described activities. Requests for line item changes shall be made in writing by the Commission to BDAS and must be pre-approved in writing.

6/4/15
Date:


Name: Joseph Mollica
Title: Commissioner
New Hampshire Liquor Commission

6/8/15
Date:


Name: Nicholas A. Toumpas
Title: Commissioner
New Hampshire Department of Health and Human Services



The preceding Memorandum of Understanding, having been reviewed by this office, is approved as to form, substance, and execution.

Office of the Attorney General

Date: 6/10/15

Name: [Signature]
Title: Attorney General

I hereby certify that the foregoing Memorandum of Understanding was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: _____ (date of meeting).

Office of the Secretary of State

Date: _____

Name: _____
Title: _____

Attachment A



**NH DIVISION OF LIQUOR
ENFORCEMENT AND
LICENSING
ADMINISTRATION & OPERATIONS
MANUAL**



CHAPTER: A-130

SUBJECT: Compliance Checks

REVISED: May 7, 2010

EFFECTIVE DATE: September 21, 2007

DISTRIBUTION: Sworn Personnel

APPROVED: Director Eddie Edwards

I. PURPOSE

- a. To establish policies and procedures for compliance check operations for the Division of Enforcement & Licensing. Why do compliance checks? Compliance checks can save lives!
- b. Alcohol has been identified as a major contributing factor to a wide variety of crimes. Crimes against both persons and property often involve people who have consumed alcohol. Youthful offenders commit many of these crimes. Research shows that the earlier teenagers start drinking, the more likely they will later become addicted to alcohol or other drugs. When states raised the legal drinking age to 21, researchers found that the rate of alcohol consumption and alcohol-related problems decreased among 18-20 year olds; those who started drinking later in life drank less and drank less often. Thus, reducing the availability of alcohol to youth is an effective strategy to reduce crime, both today and in the future.

II. PROGRAM ADMINISTRATION

- a. The administration of all compliance check activities shall be under the direction of the Compliance Unit and the Lieutenant responsible for the area the checks are to be conducted. In the absence of the regional lieutenant the area sergeant will be responsible for the checks. Compliance checks are part of the enforcement of RSA 179:5 and as such Investigators may partake in the compliance checks jointly with or independent of any other local or state law enforcement officer.
- b. The program administration and procedures adopted shall create an environment where the licensee or their agent will make decisions based upon a fair and reasonable set of facts and circumstances. Compliance checks shall not incorporate any attempt to coerce or otherwise entrap an individual.
- c. Underage buyers used in Division compliance checks may or may not be paid for

Attachment A

“reasonable person” to be someone whose age is in question. Therefore the following characteristics are incorporated into the protocol:

- i. UAB’s should appear to be between 17-19 years old. If the UAB is 20 they must appear to be between the ages of 17-19. Avoid the borderline age of 20 to help avoid “apparent age” challenges or confusion if the UAB turns 21 between the purchase and any trial or administrative action.
- ii. For the purposes of conducting *tobacco compliance checks* the UB should appear to be between the ages of 15 and 16 years old. If the UB is 17 they must appear to be between the ages of 15 and 16. Avoid the borderline age of 17 to help avoid “apparent age” challenges or confusion if the UAB turns 18 between the time of the purchase and the time/date of any criminal or administrative proceedings. Exclude any person who is in their last quarter of 17 years of age. This is an area where officer discretion is critical to the integrity of the operation.
- iii. Females should wear little to no makeup, wear casual attire and be of an average height and build. Males should have no facial hair, wear casual attire and be of average height and build.
- iv. UAB’s must never have purchased or possessed alcohol or tobacco illegally, and must commit to not purchasing or possessing alcohol or tobacco products throughout the duration of the project, including court proceedings. All UAB’s will have their names run through the SPOTS system to confirm that the UAB was not previously convicted of an alcohol related offense. The exception is a court ordered participant.
- v. UAB’s must be willing to testify in court or administrative hearings.
- vi. Each under age buyer deemed approved to be utilized during compliance check operations shall complete a Youth Enforcement Handbook. The said handbook shall be completed prior to their use during a compliance check operation. The Youth Enforcement Handbook shall be completed in full and forwarded to the Office of Professional Standards for filing.

IV. AGE ASSESSMENT PANEL

a. Certification of Underage Buyers

- i. Compliance checks have been used as an educational tool throughout the state for several years. The question has often been raised, was the underage buyers appearance in question or did the underage buyer look old enough to legally purchase the age restricted product? To assure to the public that compliance checks are conducted in fair manner and utilizing persons that appear underage, an Age Assessment Panel (AAP) will be created to select the

Attachment A

underage persons. The AAP would be developed to create a data-base of underage individuals for use in compliance checks. Each underage individual will be assessed or certified as a person whose appearance is such that a reasonable and prudent person would check for ID in an age restricted scenario.

b. Buyer Age Appraisal

- i. Conducting an apparent age appraisal of potential buyers provides:
 1. Strong evidence that a “reasonable person” would consider the buyer to be under the legal age to purchase alcohol or tobacco.
 2. An opportunity for community groups or leaders to be involved in the compliance check operations, which will promote positive community relations.
 3. An opportunity to interview and assess prospective buyer’s “court presence” and utility as a witness.
- ii. It is recommended that a panel comprised of qualified reasonable people to do an assessment of the age of youths being considered as buyers. Appropriate panel members may include schoolteachers, guidance counselors, doctors, nurses, youth counselors, attorneys, and other underage youth. Select citizens who routinely deal with young people. Store clerks or citizens engaged in the business of alcohol sales should be used only if they are not from the jurisdiction to avoid suggestions of tipping off or favoring any businesses. An ideal panel size is from 5 to 7 members. Instruct buyers to come to the age assessment dressed in jeans, T-shirts, or sweatshirts. Advise them to select clothes similar to those they will wear when conducting compliance checks, and, if necessary, when testifying in court. Females should be advised to wear little or no makeup and to avoid wearing jewelry. Men should be clean shaven.
- iii. Have the panel and the applicants report to one site, but in separate rooms. Give each UB candidate an underage buyer applicant sheet (Form #E-031). Once the panel is assembled give each panel member an age assessment sheet (Form #E-032). Have each buyer candidate, and ideally, at least one clearly overage and one clearly underage (15-16 years old for alcohol or 13-14 years old for tobacco) youth, enter the panel room one by one, make one short statement, and then leave the room. The duration and character of the panel exposure to the buyer candidate should mimic the circumstances of a typical alcohol or tobacco sale.
- iv. If your compliance check operation will include on-sale restaurants and bars with typical low lighting conditions, consider holding the panel in a room where low lighting levels can be established. The buyer applicants can give their name or be identified by number. The panel members will fill in a rating

Attachment A

sheet that identifies each buyer candidates apparent age. For an alcohol UB AAP an ideal outcome will result in some buyer candidates being assessed at age 18 or 19 by the entire panel. In any event choose buyers judged to be 17-19 years of age by most members of the panel, and avoid hiring buyers judged to be very young (13-16) or very old (21-23) by any panel members. For a tobacco UB AAP an ideal outcome will result in some buyer candidates being assessed at age 15 or 16 by the entire panel. In any event choose buyers judged to be 15 or 16 by most members of the panel, and avoid hiring buyers judged to be very young (12-14) or very old (18-20) by any panel members.

- v. Utilize only buyers who are rated by a majority of the age assessment panel to be 17 to 19 years old for alcohol or 15 or 16 for tobacco
- vi. If there is an occasion in which the majority of the AAP rates a UAB candidate as appearing either too young or too old but their actual age is within the guidelines of this policy the investigator may request a review and reconsideration by the Director or his designee. When making the request the investigator must explain the circumstances that prompted the request and provide copies of the UAB candidate's application, panel member scoring sheets and a photograph of the UAB candidate in question. The Director or his designee will review the documentation and make a final determination as to whether or not the UAB candidate may participate in the compliance check program. This determination will be based on the Director or his designee's assessment of UAB candidate's apparent age and if he/she feels that the UAB candidate is clearly of youthful appearance and questionable age. This will be done on a case by case basis at the discretion of the Director or his designee.

c. The Panel

- i. The AAP should be comprised of a combination of community leaders and/or professionals as well as industry members. The creation of the panel in this manner is to create a balanced array of licensee peers. The AAP should be created and utilized in various areas of the state when and where needed so as to develop pockets of underage volunteers available to law enforcement agencies for compliance check initiatives. These candidates should be used as "underage buyers" for the Compliance Check Program. The AAP Program shall be organized and overseen by the Division of Enforcement of the NH Liquor Commission. Each underage person should be assessed by the panel and the question would be asked of each panel member, "Would you sell alcohol or tobacco products to this person?"
- ii. The AAP should be comprised of the following:
 - 1. Two members of the law enforcement community
 - 2. Two members of the Industry (1-On-Sale; 1-Off-Sale)
 - 3. Two parents

Attachment A

- iii. Each underage buyer to be certified by the Age Assessment Panel shall appear before the panel in two specific scenarios. One being a well lit scenario, similar to a convenience store, and the second scenario would be a more dimly lit area seated at a table to simulate a restaurant or lounge.
- iv. Each underage buyer certified by the AAP shall have Form # E-032 B prepared and signed by the panel members assessing their opinion that the individual that appeared before them was of an obvious questionable age to purchase alcohol and/or cigarettes.
- v. Under age buyers under the age of 16 years old shall have had an Employer's Request for Child Labor completed by the educational establishment of the minor. The educational establishment will be required to forward this form onto the parent or legal guardian of the minor for signing prior to returning it to the Division of Enforcement. Under age buyers under the age of 18 years old and over the age of 16 years old shall have the parental permission form completed and returned to the Division of Enforcement. The above said documents shall be completed and submitted to the Division of Enforcement prior to the utilization of the under age buyer in any compliance check operation.

V. LOGISTICS

- a. Prior to conducting a compliance check for either alcohol or tobacco the Division shall assemble and use compliance check packets before the date of the operation. Routes should be planned and maps utilized whenever feasible. A list of licensees should be established for the operation. It shall be the policy of the Division that alcohol and tobacco compliance checks shall check all licensees within a community including State Liquor Stores. Investigators working with local police departments shall encourage checks for both on-sale and off-sale licensees. If a local police department initiates the compliance check they shall be responsible for all logistics and funds for the purchase of alcohol or tobacco by the UAB. If the Division initiates the investigator in charge of the operation shall keep an accounting of the money expended at each establishment.
- b. Investigators may experience several scenarios presented by the local police departments.
 - i. If the investigator finds that the local police department is not looking for administrative action if a licensee fails the compliance check then the Division shall not participate.
 - ii. If the investigator is not notified of the compliance check in a timely manner in order to prepare the necessary paperwork and meet the investigators' schedule then the only action taken will be issuance of a Notice of Verbal

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Instruction.

- iii. If the investigator finds that the protocol established by the Commission is not followed by the local police agency then a Notice of Verbal Instruction shall be issued.

VI. PROCEDURE

- a. The Division shall implement the following steps before a compliance check is conducted:
 - i. The operational Checklist, (Form # E-033)) shall be utilized as a guideline for setting up compliance checks. The Compliance Unit and/or area Investigator will inform the regional lieutenant of the upcoming compliance checks.
 - ii. The Investigator will inform the Director of Enforcement's Administrative Assistant of the pending compliance check operation prior to its execution. (As much notice as possible).
 - iii. Lieutenants or their designee will secure funds for the investigator/UAB to perform the compliance checks.*Investigators are not to use their personal funds for compliance checks.
 - iv. Lieutenants or their designee will secure stipend funds to issue the approved underage buyer for their volunteered time. (*The stipends shall not be given to the approved underage buyer until the conclusion of the compliance check operation*).
 - v. Review and complete Form # E-044 for each approved under age buyer prior to the commencement of the compliance check operation.
 - vi. Form E-044 shall be completed by each approved under age buyer whenever utilized in a compliance check operation and filed in the master compliance check report.
 - vii. Photograph the AAP-UAB.
 - viii. Search the UAB to document he/she is not carrying extra cash or false identification.
 - ix. Rehearse the response of the UAB to a query by a clerk as to identification or age. The policy of the Division will be to have the UAB carry their driver's license and present it upon request. The Director shall approve any deviation of this license requirement.
 - x. If a UAB that has been approved by the Age Assessment Panel is found not to

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be in compliance with the Division's standards of dress and overall appearance then the investigator conducting the compliance check(s) will not use the UAB for the operation.

VII. AT THE SCENE

- a. The safety of the UAB is always the Division's primary concern and therefore compliance checks shall be conducted with this goal. No check shall be conducted where the safety of the UAB is in question.
- b. Distribute funds for that single store attempt. If the sale is made take the change from the UAB when they emerge. If no sale is made they should retain the money until the next attempt.
- c. If the local law enforcement agency issues the criminal complaint to the clerk for selling the age restricted product, the local officer will elect to either seize the product for evidence, or photograph it and return the product back to the establishment (Some local law enforcement agencies utilize the photograph as the evidence for the sale that was made). If the age restricted product is seized for evidence, the buy money utilized shall not be seized back from the establishment. If the age restricted product is returned to the establishment after a photograph was taken, the buy money utilized for the purchase shall be immediately seized back from the establishment.
- d. If the Investigator works in a solo capacity when executing the compliance check operation (without the assistance of the local law enforcement agency), the Investigator shall issue the summons and Notice And Record of Verbal Direction as outlined below. In addition, the Investigator shall process the seized evidence by logging into evidence and tagging. The money that is exchanged shall not be seized from the licensee. A receipt for the completed sale shall be tagged as evidence along with the alcohol purchased.
- e. The compliance check buyer report form, Form # E-034, shall be completed and all evidence bagged and tagged before completing the next check.
- f. If feasible, one officer should enter the establishment to observe the transaction. If not feasible try to observe from outside the store.
- g. Buyer enters and selects an age restricted product (cigarettes, six-pack of beer in off-sale checks or a bottle of beer or glass of wine if an on-sale licensee).
- h. Upon leaving the establishment the UAB shall be debriefed on their experience and a reporting sheet shall be completed for each attempt, whether successful or not.
- i. If feasible, and without creating a situation where a licensee calls other licensees, the officers should approach the seller or server and explain the check was done and the result.

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- j. If the establishment fails an alcohol compliance check, the Investigator shall issue a Notice And Record of Verbal Instruction. On this document, the Investigator will document that the offense was a violation of RSA 179:5 (Compliance Check Failure), that there will be four (4) points assessed to the liquor license, and that a member of the management will be required to attend a Division sponsored Management Training Seminar Class within (90) days of the offense. An Form # E-045 E shall be completed and issued to each establishment at the time of the failed alcohol compliance check.
- k. If the compliance check operation involves the assistance from a local law enforcement agency; the Investigator shall make that agency aware of the Total Education in Alcohol Management (TEAM) class that is sponsored by the Division of Enforcement. It should be made known that requesting the court to order the defendant to attend this class is an option for a plea agreement.
- l. If the Investigator is issuing the criminal summons to the clerk for a violation of RSA 179:5 (Prohibited Sales); the following practice should be followed: First Offense: The Investigator shall offer a plea offer for the defendant to attend a Division sponsored Total Education in Alcohol Management (TEAM) class within a (90) day time period, and the Prohibited Sales charge to be placed on file for one (1) year of good behavior. Good behavior shall include no felony, misdemeanor, or major violation convictions. Subsequent Offense(s): The Investigator shall proceed with the prosecution as normal. Enhanced penalties are recommended.
- m. If the above plea offer is not agreeable by the defendant, then the Investigator shall proceed as normal.
- n. If the establishment fails a tobacco compliance check, the Investigator shall issue a Notice And Record of Verbal Instruction. On this document, the Investigator will document that the offense was a violation of 126-K:4 (Compliance Check Failure), and that a member of the management will be required to attend a Division sponsored Management Training Seminar Class within (90) days of the offense. An Form # E-045 shall be completed and issued to each establishment at the time of the failed tobacco compliance check.
- o. If the compliance check operation involves the assistance from a local law enforcement agency; the Investigator shall make that agency aware of the Total Education in Alcohol Management (TEAM) class that is sponsored by the Division of Enforcement. It should be made known that requesting the court to order the defendant to attend this class is an option for a plea agreement.
- p. If the Investigator is issuing the criminal summons to the clerk for a violation of 126-K:4 (Sale of Tobacco Products to a minor); the following practice should be followed: First Offense: The Investigator shall offer a plea offer for the defendant to attend a Division sponsored Total Education in Alcohol Management (TEAM) class

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within a (90) day time period, and for the offense to be placed on file for (90) days of good behavior. Good behavior shall include no felony, misdemeanor, or major violation convictions. Subsequent Offense(s): The Investigator shall proceed with the prosecution as normal. Enhanced penalties are recommended, as outlined within 126-K:4.

- q. If the above plea offer is not agreeable by the defendant, then the Investigator shall proceed as normal.

VIII. AFTER THE CHECKS

- a. The Investigator(s) shall complete Form # E-043 with the under age buyer immediately following the compliance check operation. At this time, the stipend will be given to the under age buyer for having volunteered their time in the said operation.
- b. If a sale was made by a state liquor store, the Investigator shall notify the applicable field Sergeant immediately to report all pertinent information (seller's information, buyer's information, manager's information, item purchased, court date issued, etc), who will in turn notify the commanding Lieutenant. The commanding Lieutenant will notify the Deputy Chief of the above information.
- c. The issuance of Notices And Record of Verbal Instruction as outlined above shall be documented in an IMC as a Call for Service. Within the CFS, the seller's name, UAB's name, the local law enforcement officer's name, and a narrative indicating the facts of the violation shall be included. The CFS shall be printed out, stapled to the Notice And Record of Verbal Instruction and submitted with the compliance check paperwork packet for supervisory review.
- d. The Investigator shall complete an offense report as an event. This report shall constitute the master report documenting the synopsis of the operation, and titled respectively to the type of operation that was conducted (On-Sale Alcohol Compliance Checks, Tobacco Compliance Checks, etc). The Investigator shall import digital photographs of the approved UAB's utilized in the operation onto the images portion of the offense report (The photograph to be imported shall be the photograph taken at the time the operation was executed). Within the folder containing this event (offense) report, the Investigator shall include a photo copy of the driver's licenses of the approved UAB's, a completed Form # E-042 for each approved UAB, Form # E-043 for each approved UAB, and a completed Form # E-044 for each approved UAB. In a separate folder, the Investigator shall include only the Notices And Record of Verbal Instruction which are stapled to completed CFS's. In a separate folder, the Investigator shall file all completed Form # E-034s. In a separate folder, the Investigator shall file the completed MAPPER report. All of the above separate folders utilized to organize the compliance check paperwork shall all be filed in an accordion folder and submitted for supervisory approval.

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- e. A completed copy of the MAPPER report shall be forwarded electronically to the criminal analyst for data collection.
- f. All of the issued Notices And Record of Verbal Instruction will be reviewed by the Director or his designee. At the time of this review, the Division may elect to enhance the penalty due to prior history or aggravating factors. If this is the case, the Division administration will contact the licensee directly.
- g. Letters should be prepared and sent to those licensees where a sale was not made. Use the format established by the Director.
- h. If not offered before the checks, the Division shall offer a TEAM program in the community as soon as possible after the check.
- i. Press releases will be issued under the direction of the Director or his designee.
- j. The Division of Enforcement shall not participate in any compliance checks unless a 90 day period has passed before a subsequent compliance check is conducted. The only exception to the 90 day lapse between compliance checks is the Selective Alcohol and Tobacco Initiative.

IX. SELECTIVE ALCOHOL AND TOBACCO INITIATIVE (SATI)

- a. The Division of Enforcement recognizes that compliance checks for alcohol and tobacco are a valuable educational tool when conducted in a community wide effort. However, there are situations that arise that could require a more directed form of compliance check. The Division of Enforcement receives numerous complaints from the general public regarding a specific licensee selling alcoholic beverages or tobacco products to underage persons. The SATI compliance check shall be used as an enforcement tool as opposed to an educational tool. The resulting penalties would be the same as an enforcement action.
- b. The Division of Enforcement will institute the following law enforcement initiative referred to as the **"SELECTIVE ALCOHOL AND TOBACCO INITIATIVE" (SATI)**.
- c. **"SATI"** will be a controlled law enforcement action conducted by the Division of Enforcement as a result of a formal complaint filed against a specific licensed location.
- d. Underage buyers will be utilized by a member or members of the Division of Enforcement to selectively check and attempt to make purchases of alcoholic beverages and/or tobacco products at specifically identified licensed premise.
- e. Multiple locations within a single community may be selected, but only if complaints have been logged with the Division regarding suspected sales at those additional

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locations.

- f. "SATI" shall be initiated only as a result of a formal complaint levied against a specific licensed location.
- g. The formal complaint shall be filed by the complaining party and he or she shall be identified by name, address and date of birth.
- h. The identity of the complainant shall be kept confidential and available only to the Commission if requested.
- i. Anonymous complaints will not be accepted as a valid formal complaint.
- j. The initial complaint may be filed with the Division of Enforcement by a citizen or other law enforcement agency. This information will be stored in the Dispatch portion of the IMC data base maintained by the Division of Enforcement.
- k. All protocol issues under this policy shall be followed regarding the age and appearance of the underage buyer.
- l. The regional lieutenant shall authorize the "SATI" and shall notify the Chief prior to the start of the initiative.
- m. The Deputy Chief or his designee will determine if a stipend will be given to the approved under age buyer for the time that was volunteered in the "SATI" operation prior to its execution.
- n. Each "SATI" operation attempt will require separate approval processes in regards to the issuance of a stipend to the approved under age buyer. If a stipend is going to be given to the under age buyer, the stipend shall not be given until the conclusion of the compliance check operation.
- o. Photograph the AAP-UAB prior to the "SATI" operation.
- p. Search the UAB to document he/she is not carrying extra cash or false identification.
- q. Rehearse the response of the UAB to a query by a clerk as to identification or age. The policy of the Division will be to have the UAB carry their driver's license and present it upon request. The Director shall approve any deviation of this license requirement.
- r. If a UAB that has been approved by the Age Assessment Panel is found not to be in compliance with the Division's standards of dress and overall appearance then the investigator conducting the compliance check(s) will not use the UAB for the operation

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X. Underage Buyer Removal Procedure

- a. An investigator may run into a situation where a buyer is no longer reliable, has gotten into trouble at school or with law enforcement, has engaged in activity that reflects negatively upon the division, or has requested to be removed from the calling list. The following procedure shall be taken when an underage buyer is to be removed from the list:
 - i. The investigator shall submit a memo to their immediate supervisor requesting that the Under Age Buyer be removed from the list, and explain the situation that occurred that causes concern as to their suitability as an underage buyer.
 - ii. The immediate supervisor will determine if the situation warrants permanent removal from the list.
 - iii. If it is determined that the buyers actions warrant removal, the immediate supervisor shall remove the buyer from the approved underage buyer list by notifying the training division. It shall be the responsibility of the training division to inform all field personnel of that buyer's removal from the list.