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**STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION FOR BEHAVIORAL HEALTH**

Lori A. Weaver
Commissioner

Katja S. Fox
Director

129 PLEASANT STREET, CONCORD, NH 03301
603-271-9544 1-800-852-3345 Ext. 9544
Fax: 603-271-4332 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

May 16, 2024

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division for Behavioral Health, on behalf of the Governor's Commission on Alcohol and Other Drugs, to enter into a Memorandum of Understanding (MOU) with the New Hampshire State Liquor Commission (VC #202546-B001), Concord, NH, in the amount of \$286,000 for surveillance and related activities to prevent youth access to and use of tobacco and alcohol products, with the option to renew for up to four (4) additional years, effective July 1, 2024 upon Governor and Council approval, through June 30, 2026. 35% Federal Funds. 65% Other Funds (Governor's Commission Funds).

Funds are available in the following accounts for State Fiscal Year 2025, and are anticipated to be available in State Fiscal Year 2026, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

**05-95-92-920510-33800000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS
DEPT OF, HHS: DIVISION FOR BEHAVIORAL HEALTH, BUREAU OF DRUG & ALCOHOL
SVCS, PREVENTION SERVICES**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2025	085-588577	Interagency Transfers out of Federal	92056507	\$50,000
2026	085-588577	Interagency Transfers out of Federal	92056507	\$50,000
			<i>Subtotal</i>	\$100,000

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and the Honorable Council
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**05-95-92-920510-33820000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS
DEPT OF, HHS: DIVISION FOR BEHAVIORAL HEALTH, BUREAU OF DRUG & ALCOHOL
SVCS, GOVERNOR COMMISSION FUNDS**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2025	102-500731	Contracts for Program Services	92058502	\$88,000
2026	102-500731	Contracts for Program Services	92058502	\$88,000
			<i>Subtotal</i>	<i>\$176,000</i>

**05-95-92-920510-33850000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS
DEPT OF, HHS: DIVISION FOR BEHAVIORAL HEALTH, BUREAU OF DRUG & ALCOHOL
SVCS, DRUG FORFEITURE FUNDS**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2025	102-500734	Contracts for Social Services	92057312	\$5,000
2026	102-500734	Contracts for Social Services	92057312	\$5,000
			<i>Subtotal</i>	<i>\$10,000</i>
			TOTAL	\$286,000

EXPLANATION

The purpose of this request is for the New Hampshire State Liquor Commission (The Commission) to provide surveillance and related activities to prevent youth access to and use of tobacco and alcohol products with the goal of reducing the number of sales of tobacco and alcohol by retailers to minors statewide, as well as provide education around the dangers of tobacco and alcohol use. The Commission has conducted these tobacco surveillance checks since SFY 2012. The Bureau of Drug and Alcohol Services, in partnership with the Division of Liquor Enforcement, is required by the federal Substance Abuse Prevention and Treatment Block Grant to reduce the non-compliance rate of tobacco and alcohol retailers selling tobacco and alcohol products to minors to below twenty percent (20%).

The Department is required by the federal Substance Abuse Prevention and Treatment Block Grant's Synar Amendment to conduct surveillance and enforcement of underage tobacco access laws. The Synar Amendment requires that each state conduct annual, random, unannounced inspections of tobacco retailers to assess compliance with tobacco access laws. Each state must comply with the Synar Amendment to receive the full Substance Abuse Prevention and Treatment Block Grant award.

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
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The objective of the agreement is to reduce the number of successful illegal purchases, by minors taking part in the surveillance checks, to no more than 20 percent of attempts in each state per year, with the assumption that this will reduce sales to minors as a whole. In partnership with the Department, The Commission's Division of Liquor Enforcement (DLE) conducts enforcement activities to meet the Synar regulation.

In Federal Fiscal Year 2023, the rate of retail violations for tobacco compliance checks within New Hampshire was 18.6%. The Department and the DLE have developed and disseminated education and training protocols to inform tobacco retailers of the legal age to ensure compliance with State laws and reduce the violation rate.

In SFY 2021, the Governor's Commission on Alcohol and Other Drugs began funding surveillance and enforcement efforts to prevent youth access to alcohol. The Governor's Commission on Alcohol and Other Drugs has authorized continued funding of this work for SFYs 2025 and 2026. The funding will allow the DLE, along with local police departments, to continue providing surveillance and underage alcohol compliance checks at New Hampshire establishments licensed to sell alcohol products. The goal is to conduct compliance checks of all alcohol retail establishments in the State.

The Department will monitor services and progress towards reaching performance measures through the review of monthly reports.

As referenced in Section 5 of the attached Memorandum of Understanding, the parties have the option to extend the agreement for up to four (4) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and Governor and Council approval.

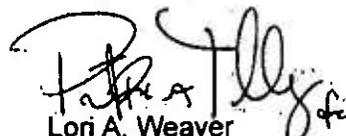
Should the Governor and Council not authorize this request, the Department may not be in compliance with the Substance Abuse Prevention and Treatment Block Grant's Synar Amendment requirements, resulting in the loss of prevention and treatment funding that supports critical programs across the New Hampshire Substance Misuse Continuum of Care System.

Area served: Statewide.

Source of Federal Funds: Assistance Listing Number 93.959, FAIN TI085821 and FAIN TI087053.

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

Respectfully submitted,


Lori A. Weaver
Commissioner

State of New Hampshire Interagency Memorandum of Understanding

Whereas, the New Hampshire Department of Health and Human Services [**"DHHS"**] is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, the New Hampshire State Liquor Commission [**"The Commission"**] is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, **DHHS** desires to:

Support surveillance and related activities to prevent youth access to and use of tobacco and alcohol products under Revised Statutes Annotated (RSA) 126-K:4 and RSA 179:5 to protect the children of New Hampshire from the possibility of addiction, disability and death resulting from the use of alcohol and/or tobacco products by ensuring that alcohol and tobacco products will not be supplied to minors.

Whereas, pursuant to (RSA) 126-K:4 and RSA 179:5 The Commission is responsible for:

Conducting surveillance and related activities to prevent youth access to and use of tobacco and alcohol products.

Whereas, The Commission desires to:

Conduct enforcement activities in accordance with RSA Chapter 126-K:4 Youth Access To and Use of Tobacco Products; and conduct enforcement activities in accordance with RSA 179:5, Prohibited Sales.

NOW, THEREFORE, the parties enter into this Memorandum of Understanding (MOU) to their mutual benefit, the benefit of the State and in furtherance of constitutional or statutory authority and objectives.

1. DHHS agrees to:

A. Pay The Commission the amount of **\$286,000** for the services described in the attached MOU Exhibit A – State Agency Responsibilities, which is hereby incorporated by reference.

Payment shall be provided using Other Funds (Governor’s Commission Funds) and Federal Funds from the Substance Abuse Prevention and Treatment Block Grant as awarded on February 15, 2023, by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), Assistance Listing Number (ALN) 93.959, Federal Award Identification Number (FAIN) T1085821; and as awarded on February 20, 2024, FAIN T1087053.

B. Perform the services described in the attached MOU Exhibit A – State Agency Responsibilities, which is hereby incorporated by reference.

2. The Commission agrees to:

A. Pay **DHHS** the amount of \$ _____ for the services described in the attached MOU Exhibit A – State Agency Responsibilities, which is hereby incorporated by reference.

B. Perform the services described in the attached MOU Exhibit A – State Agency Responsibilities, which is hereby incorporated by reference.

3. The method of payment and payment amount for the above-referenced services, is described

in the attached MOU Exhibit B – Payment Terms, which is hereby incorporated by reference.

4. All obligations hereunder are contingent upon the availability and continued appropriation of funds. The agencies shall not be required to transfer funds from any other account in the event that funds are reduced or unavailable.
5. The Memorandum of Understanding is effective July 1, 2024, upon Governor and Executive Council approval through 6/30/2026. The Parties may extend the MOU for up to four (4) years upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.
6. This Memorandum of Understanding may be amended by an instrument in writing signed by both parties. Either party may terminate this agreement by providing written notice to the other party at least thirty (30) days prior to termination.
7. The Parties agree that the obligations, agreements and promises made under this Memorandum of Understanding are not intended to be legally binding on the Parties and are not legally enforceable.
8. Disputes arising under this Memorandum of Understanding which cannot be resolved between the agencies shall be referred to the New Hampshire Department of Justice for review and resolution.
9. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
10. The parties hereto do not intend to benefit any third parties and this Memorandum of Understanding shall not be construed to confer any such benefit.
11. In the event any of the provisions of this Memorandum of Understanding are held to be contrary to any state or federal law, the remaining provisions of this Memorandum of Understanding will remain in full force and effect.
12. This Memorandum of Understanding, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Memorandum of Understanding and understandings between the parties, and supersedes all prior Memoranda of Understanding and understandings relating hereto.
13. Nothing herein shall be construed as a waiver of sovereign immunity; such immunity being hereby specifically preserved.
14. The parties agree that DHHS 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 Memorandum of Understanding.

14. New Hampshire Department of Health and Human Services

DocuSigned by:
Katja S. Fox
 Signature C63442...
 Director
 Title
 Katja S. Fox
 Print Name

5/21/2024
 Date

15. New Hampshire State Liquor Commission

[Handwritten Signature]
 Signature
 Chairman
 Title
Joseph W. McMillan
 Print Name

5/17/2024
 Date

Approved by the New Hampshire Department of Justice for form, substance, and execution:

By: DocuSigned by:
Polyn Quinno
748734844 _____ On: 5/21/2024
[Name of Assistant Attorney General] Date

Approved by the Governor and Executive Council

By: _____ On: _____
Date

State of New Hampshire
Interagency Memorandum of Understanding
Exhibit A – State Agency Responsibilities

1. RESPONSIBILITIES OF DHHS

1.1. DHHS agrees to:

- 1.1.1. Reimburse The Commission for costs incurred conducting surveillance and related activities to prevent youth access to and use of alcohol and tobacco products, not to exceed the amount specified in Form MOU 1, Interagency Memorandum of Understanding, Surveillance and Related Activities to Prevent Youth Access to Tobacco and Alcohol, Section 1, Subsection A.
- 1.1.2. Provide The Commission's Division of Liquor Enforcement with the Substance Abuse and Mental Health Services Administration (SAMHSA) form, to be completed by the Liquor Commission's Division of Liquor Enforcement.

2. RESPONSIBILITIES OF THE COMMISSION

2.1. The Commission agrees to:

- 2.1.1. Support the statutory authority and mission of RSA 126-K:4, 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.
 - 2.1.1.1. Under RSA 126-K:4, no person under twenty-one (21) 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.
- 2.1.2. Support the statutory authority and mission of RSA 179:5 Prohibited Alcohol Sales. The purpose of this law is to protect the children of New Hampshire from the possibility of alcohol addiction, disability and death resulting from the use of alcohol products by ensuring that alcohol products will not be supplied to minors.
 - 2.1.2.1. Pursuant to RSA 179-5, No licensee, salesperson, direct shipper, common carrier, delivery agent, nor any other person, shall sell or give away or cause or allow or procure to be sold, delivered, or given away any liquor or beverage to a person under the age of 21 or serve an individual who is visibly intoxicated or who a reasonable and prudent person would know is intoxicated. For all deliveries of packages by common carrier or delivery agent marked "alcoholic beverages" or "alcoholic products," the carrier shall obtain an adult signature.
- 2.1.3. Conduct enforcement activities in accordance with RSA Chapter 126-K:4 Youth Access to and Use of Tobacco Products, such as writing a citation and mandating merchant education to the clerk when there is a sale of tobacco to a minor during a compliance check.
- 2.1.4. Support Law Enforcement Activities as follows:
 - 2.1.4.1. Ensure greater than 80% compliance with NH RSA 126:K-4 among tobacco retailers.
 - 2.1.4.2. Ensure greater than 80% compliance with NH RSA 179:5 among alcohol retailers.

- 2.1.4.3. Collaborate with the Comprehensive Synar Planning Group to assist with compliance checks and other strategies throughout the State to ensure compliance with the federal Substance Abuse Prevention and Treatment Block Grant's (SABG) Synar Amendment.
- 2.1.4.4. Determine the direction of the law enforcement efforts conducted pursuant to this MOU and perform all of its duties in a manner consistent with New Hampshire law and Constitutional protections.
- 2.1.4.5. Comply with the New Hampshire Division of Liquor Enforcement and Licensing Administration & Operation Manual Chapter A-130 that describes performance procedures and goals for enforcement, which are made part of the terms and conditions of this MOU and are attached hereto as Attachment A, Standard Operating Procedure, Compliance Checks.
- 2.1.5. Develop a plan to perform state-wide comprehensive, year-round tobacco and alcohol retailer compliance checks.
- 2.1.6. Complete the minimum number of state-wide comprehensive, compliance checks in accordance with federal guidelines from SAMHSA.
- 2.1.7. Continue to use data-system provided to track compliance check progress and report information to DHHS at least monthly.
- 2.1.8. Work with DHHS to format and submit data for required and requested federal reports.
- 2.1.9. Submit year-round compliance checks data to DHHS for required yearly federal reporting.
- 2.1.10. Submit a report of Synar Checks conducted, mandated by SAMHSA, to DHHS upon completion.
- 2.1.11. Submit a report of alcohol compliance checks conducted, in accordance with Subsection 1.1.5., to DHHS upon completion.
- 2.1.12. Participate in the Youth Tobacco Access Advisory Board, in conjunction with DHHS to:
 - 2.1.12.1. Publicize compliance checks results;
 - 2.1.12.2. Develop methods to enhance retailer and community tobacco law education;
 - 2.1.12.3. Develop methods to enhance retailer and community alcohol law education; and
 - 2.1.12.4. Develop activities and initiatives related to youth tobacco and alcohol use prevention including, but not limited to media campaigns, Buyer's Beware campaigns, and youth initiatives.
- 2.1.13. Work with the Advisory Board and DHHS to expend funds not dedicated to enforcement to support the components and activities of the Preventing Youth Access to Tobacco (PYATT) State Plan, ("Comprehensive Synar Plan"), and the activities of the Advisory Board in relation to the plan.
- 2.1.14. 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.
- 2.1.15. Provide reports and records for all administrative and criminal cases, investigative reports, arrest reports, and buy audit reports.

- 2.1.16. Review and process all reports and maintain all evidence in a manner consistent with Attachment A, Standard Operating Procedure, Compliance Checks.
- 2.1.17. Compile and furnish monthly reports, as directed by DHHS, and other data as required to DHHS documenting its activities as supported by funds transferred via this MOU.
- 2.1.18. Collaborate with DHHS as requested to develop databases and/or statistical programs for measuring progress or for other reporting needs.

State of New Hampshire
Interagency Memorandum of Understanding
Exhibit B – Payment Terms

1. The maximum amount of funds available for reimbursement under this Agreement from DHHS to The Commission shall not exceed the amount specified in Form MOU 1, Interagency Memorandum of Understanding, Surveillance and Related Activities to Prevent Youth Access to Tobacco and Alcohol, Section 1, Subsection A.
2. Payment shall be on a cost reimbursement basis for actual expenditures incurred in the fulfillment of this MOU.
3. The Commission must ensure funds are used for the purpose of surveillance and related activities to prevent youth access to and use of alcohol and tobacco products, and the supporting activities as described above in Exhibit A, State Agency Responsibilities, Section 2, Responsibilities of the Commission; and in Attachment A, Standard Operating Procedure, Compliance Checks. Reports must adhere to Exhibit B-1 SFY 2025 Budget and Exhibit B-2 SFY 2026 Budget detailing the expenditures associated with the described activities. Requests for line-item changes shall be made in writing by The Commission to DHHS and must be pre-approved in writing.
4. The Commission must submit a quarterly invoice and supporting documents to DHHS no later than the fifteenth (15th) working day after the end of each fiscal quarter. The Commission shall:
 - 4.1. Submit the invoice in a format provided by DHHS or that is otherwise acceptable to DHHS.
 - 4.2. Ensure the invoice identifies and requests payment for allowable costs incurred in the previous month.
 - 4.3. Provide supporting documentation of allowable costs that may include, but is not limited to, time sheets, payroll records, receipts for purchases, and proof of expenditures, as applicable.
 - 4.4. Ensure the invoice is completed, dated and returned to DHHS with the supporting documentation for authorized expenses, in order to initiate payment.
5. In lieu of hard copies, all invoices with supporting documentation may be assigned an electronic signature and emailed to dhhs.bdsinvoices@dhhs.nh.gov, or invoices may be mailed to:

Financial Manager
Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301
6. DHHS shall make payment to The Commission within thirty (30) days of receipt of each invoice and supporting documentation for authorized expenses subsequent to approval of the submitted invoice.
7. The final invoice and supporting documentation for authorized expenses shall be due to DHHS no later than forty (40) days after the MOU completion date.
8. Notwithstanding any provision of this MOU to the contrary, all obligations of DHHS hereunder, including without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. DHHS shall not be required to transfer funds from any other source in the event that the sources of funds are reduced or become unavailable.
9. Changes limited to adjusting amounts within the price limitation, and adjusting encumbrances between State Fiscal Years and budget class lines may be made through the Budget Office upon written agreement of both parties, without obtaining approval of the Governor and Executive Council, if needed and justified.

Exhibit B-1 Budget

New Hampshire Department of Health and Human Services	
Contractor Name:	New Hampshire State Liquor Commission
Budget Request for:	Surveillance and Related Activities to Prevent Youth Access to Tobacco and Alcohol
Budget Period	SFY 2025
Indirect Cost Rate (if applicable)	N/A
Line Item	Program Cost - Funded by DHHS
1. Salary & Wages	\$55,000
2. Fringe Benefits	\$0
3. Consultants	\$0
4. Equipment Indirect cost rate cannot be applied to equipment costs per 2 CFR 200.1 and Appendix IV to 2 CFR 200.	\$0
5.(a) Supplies - Educational	\$0
5.(b) Supplies - Lab	\$0
5.(c) Supplies - Pharmacy	\$0
5.(d) Supplies - Medical	\$0
5.(e) Supplies Office	\$0
6. Travel	\$0
7. Software	\$0
8. (a) Other - Marketing/ Communications	\$0
8. (b) Other - Education and Training	\$0
8. (c) Other - Other (specify below)	\$0
Other (please specify)	\$0
9. Subrecipient Contracts	\$88,000
Total Direct Costs	\$143,000
Total Indirect Costs	\$0
TOTAL	\$143,000

Exhibit B-2, Budget

New Hampshire Department of Health and Human Services	
Contractor Name:	New Hampshire State Liquor Commission
Budget Request for:	Surveillance and Related Activities to Prevent Youth Access to Tobacco and Alcohol
Budget Period	SFY 2026
Indirect Cost Rate (if applicable)	N/A
Line Item	Program Cost - Funded by DHHS
1. Salary & Wages	\$55,000
2. Fringe Benefits	\$0
3. Consultants	\$0
4. Equipment Indirect cost rate cannot be applied to equipment costs per 2 CFR 200.1 and Appendix IV to 2 CFR 200.	\$0
5.(a) Supplies - Educational	\$0
5.(b) Supplies - Lab	\$0
5.(c) Supplies - Pharmacy	\$0
5.(d) Supplies - Medical	\$0
5.(e) Supplies Office	\$0
6. Travel	\$0
7. Software	\$0
8. (a) Other - Marketing/ Communications	\$0
8. (b) Other - Education and Training	\$0
8. (c) Other - Other (specify below)	\$0
Other (please specify)	\$0
9. Subrecipient Contracts	\$88,000
Total Direct Costs	\$143,000
Total Indirect Costs	\$0
TOTAL	\$143,000

Attachment A

alcohol and tobacco compliance checks. The Division shall ensure it is meeting all grant requirements when conducting alcohol or tobacco compliance checks

iii. Statistical analysis – When compliance checks are initiated by the Division, the following criteria will be used to determine jurisdictions where the compliance checks shall be conducted.

1. Licensee density
2. High- risk licensee population
3. Population density/youth population (college towns etc.)
4. Previous compliance check failures and operations

c. 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.

d. Underage buyers used in Division compliance checks may or may not be paid for their time. Underage buyers shall be selected from a pool of underage buyers that have been pre-certified by an Age Assessment Panel when possible.

III. Buyer Characteristics

a. In order to bring about the intent of the public policy behind compliance checks, the law must be examined. The applicable statute triggering the salesperson obligation is RSA 179:8 which states:

i. RSA 179:8. Statement from Purchaser as to Age. .

1. For the purposes of RSA 179:7, any person making the sale of beverages or liquor to any person **whose age is in question** (emphasis added) shall require the purchaser to furnish any of the following documentation that such person is 21 years of age or over:

a. A motor vehicle driver's license issued by the state of New Hampshire, or a valid driver's license issued by another state, or province of Canada, which bears the date of birth, name, address and picture of the licensee.

b. An identification card issued by the director of motor vehicles under the provisions of RSA 260:21, or any picture identification card issued by another state which bears the date

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Compliance Checks

Attachment A

of birth, name and address of the individual.

- c. An armed services identification card.
- d. A valid passport from a country with whom the United States maintains diplomatic relations.
- b. Photographic identification presented under this section shall be consistent with the appearance of the person, shall not be expired, and shall be correct and free of alteration, erasure, blemish, or other impairment.
- c. Approved Under Age Buyers for alcohol compliance check operations shall only use either a valid New Hampshire State Driver's License a valid New Hampshire State Non-Drivers ID, United States Passport, or a Military ID. Out of state identification will not be authorized for a valid form of identification
- d. The provisions of RSA 126-K:3 are identical to RSA 179:8. Therefore, any tobacco compliance check shall incorporate by reference all relative provisions from this SOP on alcohol into a tobacco compliance check.
- e. Approved Under Age Buyers for tobacco compliance check operations are approved to utilize a valid New Hampshire State Drivers License, valid New Hampshire State Non-Drivers ID and a valid United States Passport. In cases where a buyer does not have an approved form of identification, buyers will be instructed to say "I don't have my ID," when asked for identification by a clerk or server
- f. In order to fairly carry out the compliance check the UAB must appear to a "reasonable person" to be someone whose age is in question. Therefore, the following characteristics are incorporated into the protocol:
 - i. UAB's for both alcohol and tobacco compliance checks should appear to be between 16-19 years old. Avoid using buyers with an actual age of 20 to help avoid "apparent age" challenges or confusion if the UAB turns 21 between the purchase and any criminal or administrative proceedings.
 - ii. 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.
 - iii. 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 or tobacco related offense. The exception is a court ordered participant.

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Compliance Checks

Attachment A

- iv. UAB's must be willing to testify in court or administrative hearings.
- v. UAB's participating in an alcohol or tobacco compliance check shall not be in violation of 179:10, 179:10a or 126-K:6 I.
- 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 Director or Designee 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 buyer's 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 a fair manner and utilizing persons that appear underage, an Age Assessment Panel (AAP) will be created to select the underage persons. The AAP would be developed to create a database 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 & The Age Assessment Panel (AAP)

- 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. 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

Attachment A

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?"

- iii. 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, other underage youth, law enforcement personnel, parents and industry members. 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 would consist of an odd number of 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.
- iv. 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 and 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.
 - i. 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. 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.
 - v. The buyer applicants can give their name or be identified by number. The panel members will fill in a rating sheet (Form #E-032) that identifies each buyer candidates apparent age as being obviously questionable to purchase alcohol and/or cigarettes.
- vi. An ideal outcome will result in buyer candidates being assessed at age 16 to 19 by the entire panel. Utilize only buyers who are rated by a majority of the

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Compliance Checks

Attachment A

age assessment panel to be 16 to 19 years old for alcohol or tobacco.

- vii. 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.
- viii. 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. In larger jurisdictions these checks might be broken up between multiple operations. 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.

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- 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 Instruction.
- iii. If the investigator finds that the protocol established by the Commission is not followed by the local police agency, than no action will be taken

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 lead Investigator will inform the field lieutenant of the upcoming compliance checks.
 - ii. The Investigator will inform the employee who prepares the Division agenda 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. Form E-044-a shall be completed when required by the Chief or his designee. Investigators shall follow the Pandemic Mitigation Protocols as outlined in Appendix B.
 - viii. Photograph the AAP-UAB.
 - ix. Search the UAB to document he/she is not carrying extra cash or false identification.

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- x. 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.
- xi. 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.

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 follow the process as outlines 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. For tobacco compliance checks, Investigators shall use the online reporting template E-034a. E-034a shall be utilized during the checks and e-mailed at the completion of the compliance check operation. The training for the use of E-034a is located in S:\Enforcement\Common\Forms\Forms - Enforcement\AAP & Compliance Checks. It will be the responsibility of the Field Operations Lieutenant to ensure E-034a is updated in the S Drive accordingly. For alcohol compliance checks, buyer report form, Form # E-034, shall be completed for each establishment checked.
- f. If feasible, one officer should enter the establishment to observe the transaction. If

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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 the establishment fails an alcohol compliance check, the Investigator shall do the following:
 - i. Issue an Administrative Notice in accordance with Liq 603.01 (6). 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 indicate a fine of \$500.00.
 - ii. Additionally a Form #E-045 A shall also be issued. Form #E-045 A explains the following:
 - 1. For a first offense within a three year period, a Commission order is being issued requiring a member of the management to attend a Division sponsored Management Training Seminar Class within (30) days of the offense.
 - 2. Upon completion of the training, the Division will recommend a warning in lieu of the administrative notice and subsequent fine. The four points shall remain.
 - 3. Should the training not be completed within 30 days, the administrative penalty will be recommended to the Commission as issued. The licensee will have 10 days to complete the training or risk the issuance of an administrative notice for a Violation of a Commission Order.
 - 4. For a second offense within a three year period, the administrative penalties will be recommended as issued, however, a member of management will still be required to complete training within 30 days or face the issuance of an administrative notice for a Violation of a Commission Order.
- j. If the establishment fails a tobacco compliance check, the Investigator shall do the following:
 - i. Issue an administrative notice in accordance with Liq 605.02. The Investigator will document that the offense was a violation of 126-K:4

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(Compliance Check Failure), and indicate a fine of \$250.00.

- ii. Additionally a Form #E-045 B shall also be issued. Form #E-045 B explains the following:
 1. For a first offense within a three year period, a Commission order is being issued requiring a member of the management to attend a Division sponsored Tobacco Management Training Seminar (Tobacco MTS Online Training) within (30) days of the offense.
 2. Upon completion of the training, the Division will recommend a warning in lieu of the administrative notice and subsequent fine
 3. Should the training not be completed within 30 days, the administrative penalties will be recommended as issued. The licensee will have 10 days to complete the training or risk the issuance of an administrative notice for a Violation of a Commission Order.
 4. For a second offense within a three year period, the administrative penalties will be recommended as issued, however, a member of management will still be required to complete training within 30 days or face the issuance of an administrative notice for a violation of a Commission Order.
- 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) or The Grocers Education Training Seminar (G.E.T.S) 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/diversion.
- l. Compliance Checks are educational in nature and shall always be treated as an opportunity to educate the licensee and offending servers/clerks. The following procedures shall be followed for both alcohol and tobacco compliance checks in regards to the clerks and servers:
 - i. First Offense: The Investigator will issue the applicable form:
 1. Form # E-150 A - Tobacco Compliance Checks
 2. Form #E-150 B - Off-sale Alcohol Compliance Checks
 3. Form # E-150 C - On-Sale Alcohol Compliance Checks

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- a. These forms require the defendant to attend a Division sponsored Total Education in Alcohol Management (TEAM) class or Grocers Education Training Seminar within a (30) day time period, in lieu of prosecution.
- ii. Subsequent Offense(s): The Investigator shall proceed with the prosecution as normal. Enhanced penalties are recommended.
- iii. If the above plea offer is not agreeable by the defendant or they do not complete the required training within 30 days, 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 Lieutenant. The Lieutenant will notify the Deputy Director of the above information.
- c. The issuance of the administrative notice 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.
- d. The Investigator shall complete an offense report as outlined in the IMC flow chart. 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). An example of the synopsis is included in appendix "A". 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. When entering the calls for service for any compliance check, investigators shall reference the IMC flow chart located in S:\Enforcement\Common\Forms. All evidence seized by the Division will be entered as property linked to the offense

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report. For the purposes of compliance checks only the offense report does not need to include a header or aggravating and mitigating factors as outlined in A-121 Report Writing Procedures.

- e. A completed copy of the MAPPER report shall be included in the report as well as forwarded electronically to the criminal analyst or program specialist for data collection. The COU unit shall also be notified immediately upon completion of the checks. The notification shall include the following:
 - i. Compliance Check Failure – City/Town/County
 - ii. Notification of licensees that failed
 - iii. Violation Date
 - iv. Required Training (MTS, TEAM, GETS)
- f. Press releases will be issued under the direction of the Director or his designee.
- g. 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 & 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 may 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 lieutenant shall authorize the "SATI" and shall notify the Deputy Director prior to the start of the initiative.
- m. The Deputy Director 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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- s. Review and complete the attached Form # E-044 for each approved under age buyer prior to the commencement of the compliance check operation.
- t. Form # E-044 shall be completed by each approved under age buyer whenever utilized in a compliance check operation and filed in the offense report.
- u. 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.
- v. If feasible, one investigator should enter the establishment to observe the transaction. If not feasible try to observe from outside the store.
- w. 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).
- x. 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.
- y. The "SATI" operation will consist of two (2) checks done at least 15 but no more than 30 calendar days apart.
- z. Each "SATI" operation offense will be considered a single violation.
- aa. The "SATI" operation will be recorded and filed as an IMC Incident report. The report shall identify the licensee; the complaints alleged and the person or persons used for the operation.
- bb. The "SATI" violations shall be filed in IMC Offense Reports (OF) with full details describing the violation in addition to the complaints filed against the location. Within the folder containing this offense report, the Investigator shall include a photo copy of the driver's licenses of the approved UAB's, a completed Form # E-034, a completed Form # E-042 for each approved UAB, Form # E-043 for each approved UAB (*if applicable*), and a completed Form # E-044 for each approved UAB (*if applicable*).
- cc. Each "SATI" offense will constitute the issuance of an Administrative Notice of Agency Action to the establishment. The Administrative Notice shall indicate that it is a Must Appear, and that the establishment shall contact the legal department of the Division within five (5) business days of the offense.
- dd. The Investigator(s) shall complete the attached Form # E-043 with the under age buyer immediately following the "SATI" operation. At this time, the stipend will be given to the under age buyer for having volunteered their time in the said 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 buyer's 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.