

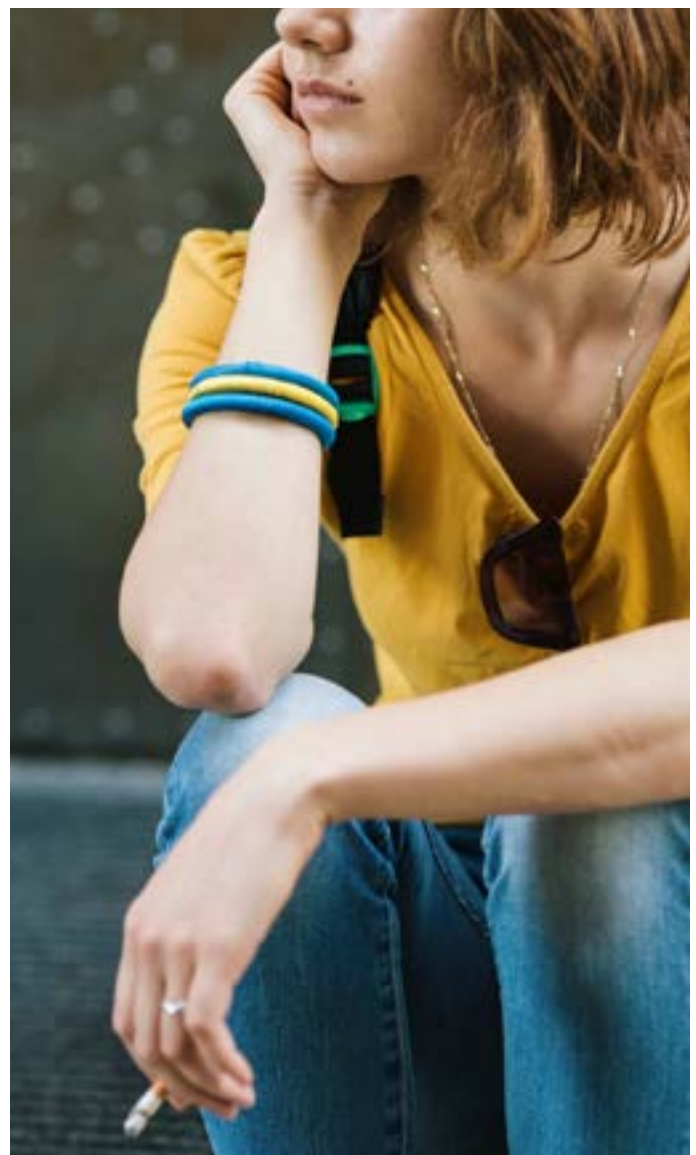


SYNAR COMPLIANCE: E-CIGARETTE & T21 LAWS



The Synar Amendment to the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act requires states to enact and enforce laws prohibiting the sale or distribution of tobacco products to those under the age of 18.

With a growing number of states restricting youth access to e-cigarettes and raising the minimum sales age for tobacco products, questions have arisen about how these new state laws interact with Synar inspections and enforcement. This fact sheet provides answers to these questions and guidance on Synar compliance for states with new laws that reduce youth access to tobacco.¹ While we intend this fact sheet to be a useful tool, states should always contact the Substance Abuse and Mental Health Administration directly to ensure that their inspection protocol meets federal requirements.²



States must meet Synar Amendment requirements before they can receive their Substance Abuse Prevention and Treatment (SAPT) Block Grant funds.³ A state must have a youth access law prohibiting the sale of tobacco products to anyone under the age of 18 and enforce its law so that when random inspections are conducted, 80 percent of retailers are in compliance.⁴ Since these requirements were established in 1992, most states have had little trouble in conducting inspections and maintaining acceptable compliance rates.⁵

Q: Can a state conduct Synar compliance inspections and state enforcement inspections concurrently?

A: Yes, a state may use SAPT Block Grant funds to conduct Synar compliance inspections at the same time as inspections that could ultimately lead to state enforcement actions, but this must be noted in the state's inspection protocol. Note that while this can be an efficient way to save money, it does introduce some complications. State enforcement actions will initiate a legal process that may require the participation of inspectors and enforcement officials. This process will need to be paid for separately, because SAPT Block Grant funds cannot be used for enforcement purposes, as discussed below.

Q: Can a state use its Substance Abuse Prevention and Treatment Block Grant funds to pay for enforcement inspections?

A: Partially. When Synar compliance inspections and state enforcement inspections are conducted together, all parts of the process that relate to the inspection process can be paid for with block grant funds. This includes activities like the development of an inspection protocol, selection of the sample, and the time spent conducting the inspections.⁶ The parts of the inspection that relate to enforcement, such as the time spent issuing citations or required follow-up inspections, cannot be paid for with block grant funds.

Q: When should e-cigarettes be included in an inspection protocol?

A: The Synar Amendment does not define the term "tobacco product." It is up to the states to determine which products youth are using and should be included in inspections. Due to concerns about youth use of e-cigarettes, many states now include e-cigarettes in their inspection protocol. Because the Synar Amendment and its implementing regulation are focused on com-



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pliance with state youth access laws, e-cigarettes must be considered tobacco products under the state youth access law if SAPT Block Grant funds are to be used to inspect retailer compliance with state requirements that e-cigarettes not be sold to youth. States should consider that once Synar funds are used for inspections concerning e-cigarettes, sales of e-cigarettes to youth will be included in compliance reports to SAMHSA. Thus, each state's sales of e-cigarettes to minors will be considered in determining if the state has met the Synar Amendment's 80 percent compliance rate and can receive SAPT Block Grant funds.⁷

Q: How should a state conduct inspections when the minimum legal sales age is above 18?

A: Similarly, in those states that have raised the minimum legal sales age above 18 by amending their youth access laws, SAPT Block Grant funds can be used to inspect whether tobacco products are being sold to persons between the ages of 18 and 20, as long as those enforcement inspections are done concurrently with Synar-related compliance inspections. In those states, and in states where minors cannot be used for inspections, young-looking adults (those who are 18 or older) may be used to conduct inspections.⁸ Again, once a state revises its protocol to inspect for compliance concerning sales to persons between the ages of 18 and 20, SAMHSA will consider any violations when determining if the state qualifies for SAPT Block Grant funds. For this reason, as with any state law affecting the tobacco market, the state needs to educate retailers about the latest requirements. The state also needs a clear enforcement plan so new minimum legal sales age requirements can be successfully implemented.

Note

This fact sheet does not address U.S. Food and Drug Administration-funded enforcement of federal youth access laws that are set at 18. FDA funding cannot be used to enforce state laws setting the minimum sale age at 21. For more information about how federal youth access laws relate to Synar and state law enforcement, see the [FDA's Tobacco Retail Compliance Inspection Contracts and the SAMHSA's Synar Program](#).

Contact Us

Please feel free to contact the Tobacco Control Legal Consortium at publichealthlawcenter@mitchellhamline.edu with any questions about the information in this fact sheet.

This publication was prepared by the Tobacco Control Legal Consortium, a program of the Public Health Law Center at Mitchell Hamline School of Law, St. Paul, Minnesota. The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. This document should not be considered legal advice.

Endnotes

- 1 Please note that the information contained in this publication is not intended to contain or replace legal advice.
- 2 Note that inspections necessarily precede both a determination of compliance with the 80 percent rate of sales to youth and whether or not a state law has been violated, triggering an enforcement action.
- 3 See U.S. Dep't of Health & Human Svcs., Substance Abuse and Mental Health Services Admin., About the Synar Amendment & Program, <https://www.samhsa.gov/synar/about>.
- 4 U.S. Dep't of Health & Human Svcs., Substance Abuse and Mental Health Services Admin. Implementing the Synar Regulation, Tobacco Outlet Inspection (2010), at 3.
- 5 See, e.g., Centers for Disease Control and Prevention, SAMHSA Synar Reports: Youth Tobacco Sales, 1997-2014, <https://chronicdata.cdc.gov/Policy/SAMHSA-Synar-Reports-Youth-Tobacco-Sales/escb-scz6/data>.
- 6 The Substance Abuse and Mental Health Services Administration used to allow states to use block grant funds to pay for a law enforcement officer's time for combined inspections only if state law dictated that the officer must be present for the Synar inspection. As of January 1, 2011, SAMHSA now allows states to fund an officer's time regardless of whether state law mandates the officer's presence. E-mail exchange from Jennifer Wagner, Sr. Public Health Advisor, SAMHSA/Ctr. Substance Abuse Prevention, to author (March 28, 2016).
- 7 There is no current written guidance on inspections related to e-cigarettes, but SAMHSA has indicated that its similar treatment of smokeless tobacco products is instructive. *id.*; see U.S. Dept. of Health & Human Svcs., Implementing the Synar Regulation, Tobacco Outlet Inspection, at 9-10.
- 8 U.S. Dep't. of Health & Human Svcs., *supra* note 5, at 14-15.