

2011 Synar Amendment Compliance Survey (FFY 2012)

SUMMARY REPORT

**Prepared by:
Eric Habel
Research Scientist
September, 2011**



NEW YORK STATE
OFFICE OF ALCOHOLISM & SUBSTANCE ABUSE SERVICES
Addiction Services for Prevention, Treatment, Recovery

*Division of Outcome Management and System Information
William Phillips, Associate Commissioner*

EXECUTIVE SUMMARY

During Federal Fiscal Year 2011, the New York State Office of Alcoholism and Substance Abuse Services (OASAS) completed its sixteenth annual mandated survey of illegal tobacco sales to underage youth, to assess compliance with the Federal Synar Amendment. Approximately 46 million dollars of Federal Substance Abuse Prevention and Treatment (SAPT) Block Grant funding to New York is directly tied to compliance.

Following are the most noteworthy findings of the 2011 survey:

- Compliance checks were completed at 1,260 tobacco retail outlets throughout New York State. The sample included clustered areas within 23 of the state's 62 counties;
- Only 67 illegal sales occurred, a retailer violation rate of 5.3%, adjusted by sampling weight to a Federally-reportable **5.6%, New York's second best in the sixteen year history of the survey;**
- This retailer violation rate, and the meeting of statistical precision standards, indicates that New York will continue to be in compliance with the Synar Amendment national standard of 20% or lower;
- An additional 113 compliance checks were attempted but not completed, and were replaced with alternate outlets. Reasons included those no longer selling tobacco, non-operational status, inability to locate, temporary closure and lack of youth access;
- A small majority (55%) of compliance checks were done with male youth operatives;
- The violation rate for checks involving male youth (5.6%) was higher than those involving females (4.9%);
- Most of the compliance checks were performed by 17-year-olds (62%), with fewer 16-year-olds (32%), and the remainder (6%) done by 15-year-olds;
- The 17-year-olds had the highest violation rate (6.5%). The 16-year-olds had a 3.7% rate, and the 15-year-olds had a rate of 1.4%;
- Nearly 61% of all sales were made at grocery or convenience stores, with the remainder of sales spread across a number of retail categories;

- There were no vending machine sales, and although a very low number of vending machines were sampled (5), this finding suggests that adherence to new Federal regulations prohibiting any vending machine from being placed in outlets accessible to minors is a work in progress;
- The weighted over-the-counter violation rate was 5.9%;
- New York City accounted for 36% of the overall sample. The New York City violation rate was the lowest to date at 8.0%; it was improved from last year's previous best of 9.8% and maintained a recent trend of noteworthy improvement there (over 20% as recently as 2006);
- In non-New York City locations, the sales rate was 3.8%, minimally higher than last year.

Additional outcomes of the 2011 survey:

- Maximum funding of the FFY 2012 SAPT Block Grant for OASAS has been protected, helping to insure a continuation of vital operating funds for treatment, prevention and recovery services in New York State and the consumers they serve;
- Interagency cooperation to achieve the common goal of tobacco control and smoking cessation has continued to progress;
- Recent trends associated with improved statewide results in overall anti-tobacco efforts have been reinforced despite recent budget cuts;
- The role of OASAS as a key stakeholder in those efforts has been maintained;
- Tobacco retailers continue to be vigilant about the very real threat of fines, tobacco and lottery licensure penalties and media exposure of violations, as enforced by local and regional health departments.
- OASAS has met the target for the newly implemented Synar metric on the agency's 2011 Outcomes Dashboard by significantly out-performing the most recently published national average weighted retailer violation rate of 9.3%. This composite rate represents all fifty States, as well as the District of Columbia and US territories receiving SAPT Block grant funding.
- Substantial progress has been made in training staff to replace the survey coordinator upon his upcoming retirement, helping to insure a smooth transition that will maintain New York State's position as a national leader in the project.

Introduction

Between October 2010 and July 2011, the New York State Office of Alcoholism and Substance Abuse Services (OASAS) completed its sixteenth consecutive annual survey to measure compliance with the Synar Amendment. This legislation was passed by Congress in 1992, with the regulations published by the Center for Substance Abuse Prevention (CSAP) of the United States Department of Health and Human Services in 1996. It was named for its original sponsor, the late Representative Michael Synar of Oklahoma.

As a mandate attached to the annual SAPT block grants made to State and U.S. territory-level chemical dependence agencies, recipients are required to conduct annual surveys consisting of random, unannounced inspections of tobacco outlets to establish a representative, statistically valid rate of sales to minors less 15-17 years of age. This report is intended to inform key stakeholders within New York State government about key findings and trends.

Design and Methodology

Unannounced compliance checks using underage youth (128 operatives, attempting to purchase cigarettes or other tobacco products) were administered to a randomly selected sample of retail tobacco outlets around New York State. The multi-stage sampling design accomplishes geographic and demographic diversity by stratifying the State's counties according to tobacco outlet density per youth population, then selecting zip codes as primary sampling units proportionate to the overall tobacco outlet population of each stratum. This design was approved by CSAP in 1996 and has remained intact over the years with no major modifications.

The sample, drawn from a state tobacco retailer registration database maintained by the Department of Taxation and Finance (DTF), resulted in tobacco outlet lists for fifty local geographic clusters in 23 of New York's 62 counties. Eleven counties had multiple clusters, ranging from 2-6.

Compliance checks were conducted by the New York City Department of Consumer Affairs (DCA, on behalf of the City's Department of Health and Mental Hygiene), 15 county health departments and 3 district offices of the New York State Department of Health (DOH). The DOH Bureau of Community Environmental Health acted on OASAS' behalf in dealing with the local inspectors, insuring proper data format and timely submission of the data. These inspections are a subset of comprehensive statewide checks performed annually under the DOH youth tobacco statute.

Data collection instruments used by DOH and DCA for non-Synar tobacco enforcement inspections were utilized for this survey. A uniform compliance check protocol was used for all inspections for both the youth and the adult monitors. Data were entered into CSAP's Synar Survey Estimation System (SSES), which calculated and tabulated statistics required for the Annual Synar Report segment of OASAS' block grant application for FFY 2012.

Discussion of Findings

The outcome in New York City is typically a central factor in the State's overall Synar compliance rate. Synar improvements in recent years have been driven by decreasing rates in New York City, while the rates in other parts of the State seemed to have moderated. In 2010, the NYC violation rate declined to a new historic low while rates outside the city increased slightly, and this trend continued in 2011. The latter statistic should not be cause for alarm, however, as these rates were already quite low and are subject to variability due to random sampling and local conditions. New York City's historical Synar rates continue to compare favorably with many large urban centers across the country. While the challenge of compliance is greater than in rural, suburban and smaller urban areas due to population density and cultural diversity, the City government's aggressive anti-tobacco measures (including a local excise tax, culturally sensitive media campaigns and rigorous enforcement) have led to progress in tobacco control outcomes. Among these are significantly reduced smoking rates, as reported in a five year longitudinal study by the Federal Centers for Disease Control (2007). Despite New York City's continual improvement, violation rates are still somewhat higher than in suburban and rural areas across the State, meaning that the larger sampling representation in the City (18 clusters or 450 outlets in 2011 vs. 13 clusters or 325 outlets in 2010) may account for the minimal increase in the overall State violation rate.

Statewide Synar results have shown a remarkably steady improvement over the years (see Appendix A). Since the baseline violation rate of 38.1% was established in 1996, there have been decreases (improvements) in the rate of illegal sales for 12 of 15 succeeding years. The national standard of 20% or below that must be achieved for states to maintain their full block grant funding began in FFY 2000, with target rates negotiated for the years prior to that; New York has never missed its target or failed to meet statistical precision requirements. While State compliance is based on a national norm and not determined by performance relative to other States, the latter does provide an interesting measure of success. In the most-recently released CSAP national report of Synar compliance (FFY 2010), New York ranked 12th best among 50 States and the District of Columbia (U.S. territory rates are not published). In a historical analysis of averages for the ten most populous States, a realistic comparison group based on size and complexity, New York ranks second.

This year's results continue to validate the notion that States with diverse and coordinated tobacco control strategies (incorporating public policy, public education and enforcement) are in the best position to survive cuts in one or more of those areas. Over the past four years, New York's enforcement budget was reduced by nearly 20%. The impact of these reductions appears to be mitigated by a number of factors. The state's youth tobacco access law (the 1992 Adolescent Tobacco Use Prevention Act or ATUPA) mandates multiple rounds of compliance checks: attempted purchases at every registered outlet, follow-up inspections for violators and courtesy checks for proper display of signage and valid licensure. Synar is conducted as a subset of this overall program. Due to this high level of activity, budget cuts to date have affected the secondary checks and left the primary visits intact. In addition, the number of registered outlets has decreased over the past decade in New York State, ostensibly due to decreased smoking rates, high excise taxes on tobacco products and Clean Air law, helping to reduce the costs.

The profile of non-completed checks from the 2011 Synar survey is generally consistent with recent years, with one exception. As in the recent past, more than half of the non-completed compliance checks were ineligible based on outlets no longer selling tobacco products or going out of business. Typically, some establishments discontinue tobacco sales during mid-year, yet fail to report the status change as they have already paid for a full year's license in advance, and there is no provision for a mid-year refund under DTF policy. This year, there was a higher than usual number of outlets that could not be located, all in New York City and attributable to the fact that they could not be matched on the City's internal database, which catalogues outlet locations. This is a temporary issue that is currently being corrected, and the number of outlets affected (16) was a small subset. The accuracy rate of the DTF list frame or registration file, based on the Synar sample, remains high and improved over the past year from 91.1% to 93.4%.

The proportion of youth operatives by gender was more uniform than in any recent years, with males outnumbering females 55% to 45%. Males have exceeded 60% overall throughout the majority of the project's history. Equalization of the numbers of male and female youth operatives used for inspections has been recommended, although not mandated, at Federal level. While this equation has been difficult in New York and other States due to the challenges of finding youth teenage volunteers or employees, it appears that some progress has been made.

The higher sales rate to males continues a recent trend. Early on, females were consistently more likely to make an illegal purchase than males; it was thought in those years that clerks may have been more sympathetic to females and that knowledge of the law played less of a role. There has been little evidence concerning these factors, however. The sales rate is typically proportionate to the age group of the operatives (meaning violations are most likely in the 17 year old population), as evidenced in the violation rates directly correlating with age this year. Logically, illegal sales are likely to be based on a visual assessment (New York's inspection protocol prohibits youth from carrying identification or lying about their ages if asked). Since appearance generally correlates with age, this pattern is not surprising or unusual.

Grocery and convenience stores had the highest number of sales; that statistic may merely be reflective of the fact that in New York City grocers are by far the most dominant type of tobacco retailer and convenience stores are prevalent upstate. While data describing whether a retailer is a chain outlet or individually owned are not collected, various studies have shown that chain outlets tend to be more compliant with youth tobacco access laws based on increased resources for employee training. A specific listing of retailers that violated during the 2011 Synar survey is found at Appendix B; these data are not reportable to CSAP at present, but are maintained at the State level to provide information for remediation and local merchant education. Despite the low number of violators (67), tracking sales patterns by county and municipality is a valuable practice.

The number of vending machines in the State has declined by over one half in the past decade, and as a result, so have the number of vending machines in annual Synar surveys (which must be empirically located within the clustered local sampling units as they are not registered by location.) Appendix C illustrates this trend over the years. Historically, Synar violation rates

for vending machines have exceeded those for over-the-counter outlets. Although vending machines in New York State are limited by law to bars or the bar areas of other establishments, they have always been difficult for bartenders or other staff to monitor. In recent years, many vending machine operators have ordered locking devices to prevent easy access, and many others have simply discontinued having a machine on premises. This trend accelerated after the 2003 passage of the state's Clean Air Act took away the ability of patrons to legally smoke inside these establishments. Many taverns have also trended toward limiting access to adults at the door, further limiting the likelihood of vending machines being included in Synar compliance checks. As of this year, with the passage of new tobacco regulations administered by the US Food and Drug Administration (FDA), vending machines cannot be located in any areas accessible to youth. This means that no Synar compliance checks on vending machines should be possible, although attempts must still be made. The site owners of the five vending machines accessed in this year's survey were advised by DOH that they are now out of compliance with the FDA statute, and these machines must be moved or youth access to their establishments must be prohibited.

Conclusions

The original intent of the Synar Amendment was for States and other jurisdictions to pursue multiple strategies aimed at reducing underage tobacco use. Although the primary mandate is focused on reduced access for minors through enforcement, Synar has proven to be most effective when integrated with a broader set of measures to include public policy, public/merchant education, retailer regulation and prevention. National average retailer violation rates have generally decreased over the years as more States have employed this comprehensive approach. No States have been penalized for non-compliance with the Synar Amendment since 2005. The national average retailer violation rate, which New York has consistently bettered, was most recently reported at 9.3%.

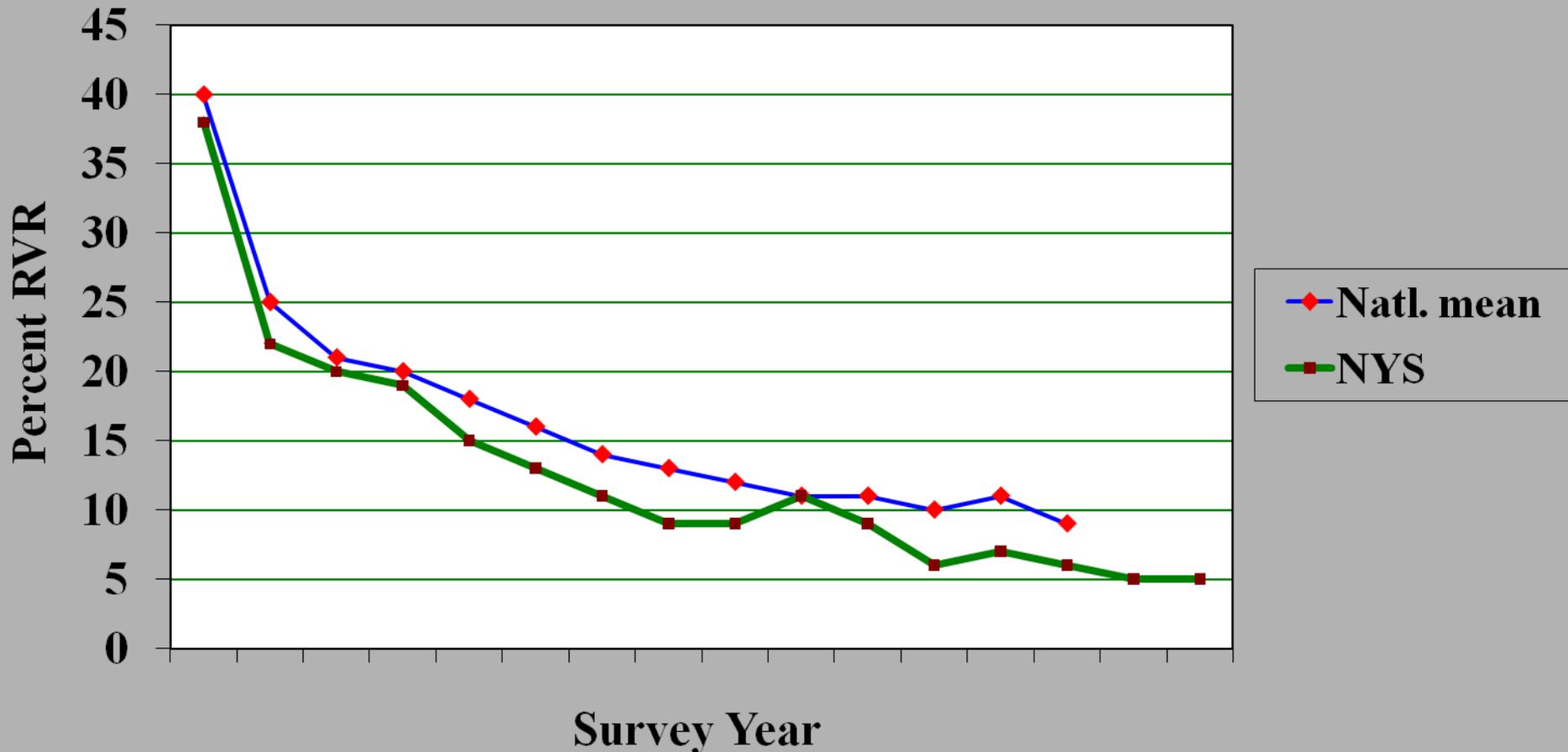
In New York State, the basic pieces cited above have long been in place and continue to be enhanced despite fiscal constraints. Among these are rigorous Clean Air legislation, high tobacco excise taxes, high retailer registration fees, tough enforcement standards with graduated penalties for violation and creative use of advertising and media. During the next year, further efforts will be made to improve the already exemplary Synar performance by leveraging secondary data and working with local governments to increase merchant education in areas where violations occurred.

Rigorous enforcement of New York's Adolescent Tobacco Use Prevention Act (passed in 1992 and regulated in 1997) has effectively changed the overall behavior of tobacco retailers. Since the original implementation of the law, over 2,200 tobacco licenses and over 600 lottery licenses have been suspended in addition to the consistent administration of fines (over \$1.1 million in the last program year). The number of violations has decreased over the years, mirroring Synar results.

OASAS, and its stake in the SAPT Block Grant, have done well in the Synar experience to date because of the State's progressive anti-tobacco attitude as well as that of many counties, cities and towns. Having achieved sustainable success in meeting the primary goal of maintaining Federal funding through the block grant, we will continue to strive for improved outcomes through interagency cooperation and effective management of the process.

The start of the next Synar program year (October 1, 2011) will mark a milestone, as I turn over control of the OASAS Synar survey to the capable hands of Nina Gargon, PhD. and Joyce Robinson, PhD. Having overseen the program since its inception, the level of progress I have observed has been rewarding. This new Synar team will be well prepared to provide continuity, with the critical element of complementing each other and providing back-up for key analytical tasks. To solidify the crucial interagency relationships that enable the success of New York's Synar program, a memorandum of understanding has been drafted and is currently under review. It is hoped that each partner agency will continue to give the highest priority to this project, not only to protect block grant funds but also as an important public health initiative that serves to decrease the number of future smokers.

NYS SYNAR RETAILER VIOLATION RATE SUMMARY: 1996—2011 (Appendix A)



SYNAR Violations (2011 / FFY 2012)			Appendix B	
COUNTY	OUTLET NAME	LOCATION	OUTLET TYPE	MODE
Bronx	ASA Candy Corp.	Bronx	grocery/supermarket	OTC
Bronx	Brotherhood Gourmet Deli Corp.	Bronx	delicatessen	OTC
Bronx	El Kiosco Grocery	Bronx	Grocery	OTC
Bronx	Crotona Meat and Grocery	Bronx	Grocery	OTC
Bronx	S & J Deli (Ahmon Food Inc.)	Bronx	grocery/supermarket	OTC
Bronx	TMC Gas Corp	Bronx	convenience/gas	OTC
Bronx	Atleta Deli & Grocery	Bronx	grocery/supermarket	OTC
Bronx	Lisandro Grocery	Bronx	grocery/supermarket	OTC
Bronx	Toolsee Deli & Grocery	Bronx	grocery/supermarket	OTC
Bronx	Adames Deli & Grocery	Bronx	grocery/supermarket	OTC
Clinton	This and That	Plattsburgh	tobacco	OTC
Erie	Orchard Park Sunoco	Cheektowaga	gas station	OTC
Kings	Veronica Deli Grocery	Brooklyn	grocery/supermarket	OTC
Kings	Quick Stop Food Mart	Brooklyn	grocery/supermarket	OTC
Kings	Sabaa Grocery Corp.	Brooklyn	grocery/supermarket	OTC
Kings	Suhil Express Grocery Inc.	Brooklyn	grocery/supermarket	OTC
Kings	Pulaski St Deli Corp.	Brooklyn	deli/grocery	OTC
Kings	Santiago Deli	Brooklyn	deli/grocery	OTC
Kings	Miriam Deli/Grocery	Brooklyn	deli/grocery	OTC
Kings	N N Coffee Shop	Brooklyn	deli/grocery	OTC
Kings	Hauter Grocery	Brooklyn	grocery/supermarket	OTC
Kings	World Candy Store	Brooklyn	grocery/supermarket	OTC
Kings	EEM Deli & Grocery Inc.	Brooklyn	deli/grocery	OTC
Monroe	Smoke Shop	Fairport	tobacco	OTC
Monroe	Look Ah Hookah	Rochester	tobacco	OTC
Monroe	Booth's Mobil	Rochester	convenience/gas	OTC
Nassau	Manor Fruit Shack	Stewart Manor	delicatessen	OTC
Nassau	7th St. Stationery	Garden City	stationery	OTC
Nassau	Mineola Mini Mart	Mineola	convenience store	OTC
Nassau	Magoo's Deli	Lynbrook	delicatessen	OTC
Nassau	Manetto Gulf	Plainview	convenience/gas	OTC
Nassau	USA Gas	Hicksville	convenience/gas	OTC
New York	Impress Deli, Inc.	Manhattan	grocery/supermarket	OTC
New York	Duane Reade	Manhattan	pharmacy	OTC
New York	Eclectic Naturals	Manhattan	grocery/supermarket	OTC
New York	CVS Albany, LLC	Manhattan	pharmacy	OTC
New York	Columbus Deli	Manhattan	delicatessen	OTC
New York	Punto Final DeliGrocery Inc.	Manhattan	grocery/supermarket	OTC
New York	3853 Deli Grocer	Manhattan	grocery/supermarket	OTC
New York	Sing's Deli	Manhattan	deli/grocery	OTC
New York	Duane Reade	Manhattan	pharmacy	OTC
New York	Hi-Fi News Grocery	Manhattan	grocery/supermarket	OTC

SYNAR Violations (2011 / FFY 2012)		Appendix B		
COUNTY	OUTLET NAME	LOCATION	OUTLET TYPE	MODE
Oneida	Superior Markets	Utica	convenience/gas	OTC
Oneida	Culver Ave. Nice and Easy	Utica	convenience/gas	OTC
Oneida	Wally's Market	Utica	grocery/supermarket	OTC
Oneida	Price Chopper	Rome	grocery/supermarket	OTC
Oneida	Nice n Easy Grocery Shoppe	Clinton	convenience/gas	OTC
Onondaga	Maher's Midway Express	Syracuse	convenience store	OTC
Onondaga	Kanz Convenience Store	Syracuse	convenience/gas	OTC
Orange	Meadow Hill Mobil Station	Newburgh	convenience/gas	OTC
Orange	Sammy's Deli & Grocery	Newburgh	convenience store	OTC
Orange	Pete's Market	Newburgh	convenience store	OTC
Orange	Sunoco	Newburgh	convenience/gas	OTC
Queens	Friend Deli	Ridgewood	grocery/supermarket	OTC

Appendix C: NYS Synar # of Sampled Vending Machines

