

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**STATE OVERSIGHT OF TOBACCO
SALES TO MINORS**



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OEI-02-94-00270

EXECUTIVE SUMMARY

PURPOSE

To describe States' activities to monitor and enforce their laws that prohibit tobacco sales and distribution to minors.

BACKGROUND

In 1992, Congress amended the Public Health Service Act to include Section 1926, also known as the Synar Amendment. This Section requires each State (including the District of Columbia and the territories) to have a law by Federal Fiscal Year (FFY) 1994 that prohibits the sale and distribution of tobacco products to individuals under the age of 18. Section 1926 also calls for the States to enforce these laws, to perform yearly, random, unannounced inspections to measure the level of tobacco sales to minors, and to report yearly to the Secretary of the Department of Health and Human Services their progress in reducing such sales. States that are noncompliant with the law can have their Substance Abuse Prevention and Treatment block grant gradually reduced by up to 40 percent. In August 1993, the Public Health Service issued a Notice of Proposed Rulemaking for these requirements. Even though final regulations have not yet been issued, the States have been required to implement Section 1926.

The Subcommittee on Regulations, Business Opportunities, and Technology of the Committee on Small Business of the 103rd Congress requested this inspection to describe the States' progress in implementing this section.

The Substance Abuse and Mental Health Services Administration has reviewed all State laws that prohibit tobacco sales and distribution to minors and has found that the States are in compliance or actively working towards compliance. In order to avoid duplicative work, this report only examines the inspection and enforcement components of Section 1926. All data used in this report is testimonial evidence provided by the interviews with State officials.

FINDINGS

Most States Have Performed Unannounced Inspections to Monitor Compliance, But Most Do Not Use Scientific Sampling

Eighty-five percent of the States report performing inspections to monitor tobacco sales to minors in Federal Fiscal Year 1994. Of these States, a majority do not use scientific sampling techniques to select the sample of vendors that will be inspected. Scientific selection allows the results from the inspections to be generalized to the universe of all vendors in the State. Many of the States that are using scientific sampling chose vendors randomly from lists of all vendors maintained for licensing or taxation purposes. A few

States that did not have such lists were able to create scientific samples by using cluster sampling techniques.

A Majority of States Do Not Have Statewide Enforcement

Fifty-six percent of the States report no statewide enforcement activity. This includes 30 percent that report no enforcement activity at all and 26 percent of the States that only have some localities within the State enforcing the law. Another 24 percent of the States report that their main enforcement activity consists solely of the inspections used to check noncompliance with their State tobacco law. While Section 1926 distinguishes between inspections to check effectiveness and those used to enforce, these States do not.

States Cite Obstacles In Performing Inspections and Enforcement

States report the following problems with implementing Section 1926:

Inadequate guidance and technical assistance from the Department of Health and Human Services -- Twenty-one percent of the States report receiving no guidance and 36 percent report receiving minimal guidance from the Department.

Lack of a sense of priority given to State tobacco laws -- Often, enforcement is the responsibility of local police who are concerned with more serious crimes.

Lack of necessary tools -- States report that the lack of a central listing of vendors for sampling purposes and legal problems in using minors for inspections.

Lack of resources -- States feel they do not have the funds to implement Section 1926 and still fund the same level of substance abuse treatment or law enforcement.

CONCLUSION

The States have found the implementation process difficult. They are using different methods in attempting to implement section 1926 and overcome the obstacles that have arisen. The most frequently cited obstacle mentioned was the lack of guidance in implementation, particularly due to the lack of final regulations.

While the final regulations will greatly help the States, they need more than the regulations to successfully perform inspections and enforce their State laws prohibiting tobacco sales and distribution to minors. The States will need technical assistance on how to meet the requirements spelled out in the regulations. The Public Health Service has prepared a technical assistance guide and conference for the States. It plans to provide this assistance upon the release of the final regulations.

AGENCY COMMENTS

We received comments from the Public Health Service. They agree that the report provides an informative look at States' efforts to comply with statutory requirements and prohibit the sale and distribution of tobacco to minors.

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INTRODUCTION

Purpose: To describe States' activities to monitor and enforce their laws that prohibit tobacco sales and distribution to minors.

Background: In 1992, Congress amended the Public Health Service Act to include Section 1926, also known as the Synar Amendment. This Section, created to strengthen State efforts to reduce the sale of tobacco products to youth, requires each State (including the District of Columbia and the territories) to have a law by Federal Fiscal Year (FFY) 1994 that prohibits the sale and distribution of tobacco products to individuals under the age of 18. (A few States are exempt until FFY 1995, since their legislatures meet only once every two years.) Section 1926 also calls for the States to enforce these laws, to perform yearly, random, unannounced inspections to measure the level of tobacco sales to minors, and to report yearly to the Secretary of the Department of Health and Human Services their progress in reducing such sales. States that are noncompliant with the law can have their Substance Abuse Prevention and Treatment block grant gradually reduced by up to 40 percent.

The Subcommittee on Regulations, Business Opportunities, and Technology of the Committee on Small Business of the 103rd Congress requested this inspection to describe the States' progress in implementing this section.

CDC Research

The Centers for Disease Control and Prevention (CDC) has been heavily involved in researching tobacco sales and distribution to minors. It estimates that as many as one million American minors start to smoke each year, or almost 3,000 per day. In "Preventing Tobacco Use Among Young People: A Report of the Surgeon General," CDC reports that 13 studies have been conducted since 1987 to measure the rate that minors can purchase tobacco products. They have shown that young smokers are able to buy cigarettes even though most States have laws that prohibit the sale of cigarettes to minors. The studies examined over-the-counter sales and found that successful purchases of tobacco products by minors ranged from 32 percent to 87 percent, with an approximate weighted average of 67 percent. Eleven of the studies found that at least a majority of the minors who attempted a purchase were successful. Nine of these studies examined vending machine sales and found that successful purchases by minors ranged from 82 percent to 100 percent, with an approximate weighted average of 88 percent.

Past OIG Involvement

The Office of Inspector General (OIG) of the Department of Health and Human Services has conducted two inspections on this topic. In 1990, the OIG surveyed States' laws on the sale of cigarettes to minors. Its report, "Youth Access to Cigarettes," indicated that, at that time, 45 States had such laws prohibiting the sale of cigarettes to minors, but were not enforcing them.

In 1992, the OIG again looked at the characteristics of State and local laws limiting tobacco sales to minors and their level of enforcement. It reported that: (1) all but three States banned the sale of tobacco to minors under the age of 18; (2) only two States were enforcing their laws restricting the sale to minors Statewide; (3) four States were funding local initiatives restricting the sale to minors; (4) low priority by police and lack of a designated enforcing agency were seen as obstacles to enforcement; (5) despite lack of State efforts, some localities were demonstrating enforcement is possible; and (6) vending machine restrictions were the most common initiative. Along with vending machine restrictions, some localities that were doing enforcement tended to use "stings." A sting consists of a minor, under adult supervision, attempting to buy tobacco products from a vendor.

The Secretary's Model Law

The first OIG report contributed to the development in 1990 of the Secretary's "Model Sale of Tobacco Products to Minors Control Act: A Model Law Recommended for Adoption by States or Localities to Prevent the Sale of Tobacco Products to Minors." This model law was distributed to each Governor in the country, State health department officials, anti-smoking groups, experts in the youth smoking field and the few localities that had established and were enforcing youth access laws.

The model law called for: (1) licensing of vendors and revocation of their license if they sell to minors; (2) a graduated schedule of penalties so that vendors and employees are punished proportionate to their violation of the law; (3) penalties for failing to post signs; (4) designating an agency responsible for enforcement; (5) civil, in addition to criminal penalties, to avoid overloading the criminal justice system; (6) an age of legal purchase of at least 19; (7) banning or greatly restricting access to vending machines; and (8) minimizing the burden of compliance on outlets.

Notice of Proposed Rulemaking

In August 1993, a Notice of Proposed Rulemaking (NPRM) for Section 1926 was issued for comment. Federal implementation of this Section is the responsibility of the Substance Abuse and Mental Health Services Administration (SAMHSA) of the Public Health Service. Its Center for Substance Abuse Prevention prepared the NPRM, in collaboration with CDC. The NPRM's purpose is to solicit concerns and comments from the public regarding the proposed rule and is non-binding on the States. The public had until October 25, 1993 to submit comments.

The NPRM elaborates on the responsibilities of the States under Section 1926 and proposes that, along with a law limiting youth sales, the States must have other "well-designed procedures" for limiting tobacco sales and distribution to minors. Such procedures could include a licensing system, graduated penalties for illegal sales, and controls on vending machines that limit their location to places that youth are not allowed to frequent, such as bars.

The proposed rule states that the requirement of random, unannounced inspections of the vendors of tobacco products must be performed in a scientifically sound manner. States will be out of compliance if they find through these unannounced inspections more than 50 percent illegal sales during the first year of implementation (FY 1994), 40 percent during the second year (FY 1995), 30 percent the third year (FY 1996) and 20 percent during the fourth year (FY 1997). They would have their block grant reduced 10 percent the first year, 20 percent the second year, 30 percent the third year and 40 percent in the fourth year.

The NPRM limits the amount of block grant funds States are allowed to use to enforce their laws and inspect compliance. They can only use part of the five percent of the grant allowed for administrative expense to "provide technical assistance to communities to maximize procedures for enforcing the law regarding tobacco." This money can not be used for the prosecution of entities or individuals who do not comply with the law since it is not "true prevention and treatment activity."

Implementation of Section 1926

Final regulations have not yet been issued. Comments have been received by SAMHSA which has incorporated them into draft final regulations which, at the time of this inspection, are in the Department's review process. The Governor of each State were informed by SAMHSA in June of 1994 that even without the release of the regulations, they are responsible for implementing Section 1926 in FFY 1994. States not in compliance in FFY 1994 could have their FFY 1995 block grants reduced.

Since October 1, 1993, the States have been required to have laws that ban sale of tobacco products to minors. Throughout FFY 1994, States should have conducted inspections to measure compliance with their State law. They also must submit a report to the Secretary describing the enforcement activities for FFY 1994 attached to their application for the FFY 1995 block grant. They are currently applying for this grant and have until March 31, 1995 to do so.

The Substance Abuse and Mental Health Services Administration has reviewed all State laws that prohibit tobacco sales and distribution to minors and has found that they are in compliance or actively working towards compliance. In order to avoid duplicative work, this report only examines the inspection and enforcement components of Section 1926.

Other Government and Non-Profit Agency Activities

Other Federal government activities focused on limiting tobacco sales and distribution to minors may complement some States' activities to implement Section 1926. The National Cancer Institute has been working with the American Cancer Society, State and local health departments and organizations to reduce the number of youths smoking through "Community Intervention Trial for Smoking Cessation" (COMMIT) and "American Stop Smoking Intervention Study for Cancer Prevention" (ASSIST). These two programs work with many cities and States to create programs to prevent and control tobacco use. The

CDC has awarded "Initiatives to Mobilize for the Prevention and Control of Tobacco Use" (IMPACT) grants to many States' health departments. These grants are to help contribute to tobacco prevention and control programs within the States. In the private sector, the Robert Wood Johnson Foundation has a grant program available to States and communities known as "Smokeless States," whose purpose is to reduce the number of children who start using tobacco.

Methodology: Information from meetings with some State health and tobacco control officials and a literature review were used to develop a questionnaire. All 50 States, the District of Columbia, Puerto Rico, American Samoa, and the United States Virgin Islands were interviewed over the telephone, during November 1994, using the questionnaire. Attempts to reach the territories of the Commonwealth of Northern Mariana Islands, the Federated States of Micronesia, Guam, the Marshall Islands, and Palau could not be completed in a timely manner.

The initial telephone calls were to the head of the agency responsible for the Substance Abuse Prevention and Treatment block grant. Often, this individual referred the interviewer to the person within the substance abuse agency specifically responsible for the implementation of Section 1926. While several respondents were needed to answer all of the questions, only one questionnaire was used for each State or territory.

Once all interviews were completed, the data were entered into a database. Frequency distributions and cross-tabs were performed from this database.

All data used in this report is testimonial evidence provided by the interviews with State officials. We did not validate the data through any other methods.

The term "States" is used in this report to mean all of the States, the District of Columbia, and the three territories interviewed.

FINDINGS

MOST STATES HAVE PERFORMED UNANNOUNCED INSPECTIONS TO MONITOR COMPLIANCE, BUT MOST DO NOT USE SCIENTIFIC SAMPLING

Eighty-five percent of the States report performing some random, unannounced inspections in FFY 1994. For those that perform them, the number of inspections vary greatly from State to State, ranging from 4 to almost 13,000. The median number is 320. The percentage of tobacco vendors found out of compliance also varies greatly from State to State, ranging from 6 to 84 percent, with a median percentage of 54.

Eight States did not perform random, unannounced inspections in FFY 1994. Among these States, four were exempt from performing inspections due to delayed applicability; four did not do inspections, even though they were responsible for them. All States are responsible for performing inspections in FFY 1995.

A Majority of States Do Not Use Scientific Sampling

Only 42 percent of the States that perform inspections use scientific sampling techniques in a statewide inspection effort. Scientific selection allows the results from inspecting a sample of tobacco vendors to be generalized to the universe of all vendors in the State. Many of these States choose tobacco vendors randomly from lists of all vendors maintained for licensing or taxation purposes. A few States have created scientific samples without such lists. These States use cluster sampling techniques where the State is broken down into geographic areas and the number and type of vendors are estimated from other sources. Quota samples for each type of vendor are then drawn in each geographical area.

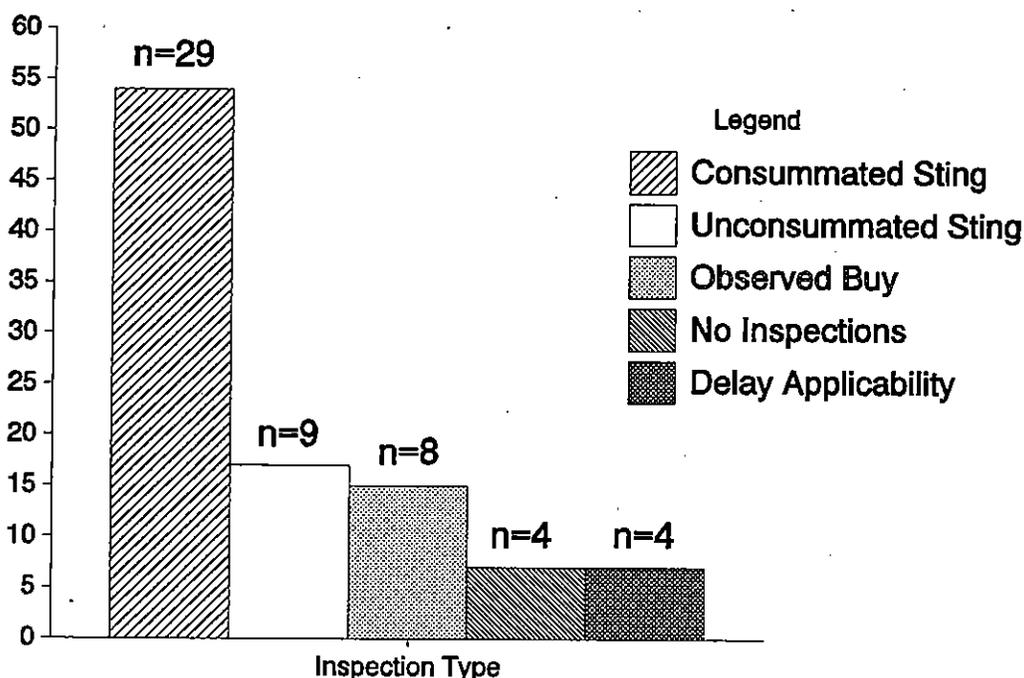
Another 38 percent of the States doing inspections report having a statewide inspection effort, but the vendors are selected in a nonscientific manner. Their results cannot be generalized for all vendors in the State. The remaining States (20 percent) that do inspections do not have a statewide inspection effort, but have some localities that performed random, unannounced inspections.

A Majority of States Performing Inspections Use Stings

A majority of States (71 percent) perform sting operations, which can be either unconsummated or consummated. Seventeen percent of the States perform unconsummated stings, which occur when a minor attempts to buy a tobacco product, but does not complete the sale. Once offered the sale by the store clerk, the minor pretends to have forgotten his or her money and leaves the store. Fifty-four percent of the States performed consummated stings, where the minor actually buys the tobacco product. (See Figure 1.)

Figure 1

Inspection Activity Percentage of States Reporting Inspection Activity



Fifteen percent of the States use observed buys as their method of inspection. An observed buy consists of an individual going into a store that sells tobacco products and watching for illegal tobacco sales for some specified period of time. While most of the States that use observed buys do so only to comply with Section 1926, a few report doing observed buys as part of their routine inspection of retail establishments.

The Type of Agencies Assigned Responsibility for Inspections Varies by State

States take a variety of organizational approaches to implement the inspection requirement under Section 1926. While a majority designate a State health department as responsible for ensuring that the inspections are performed, many States designate a State regulatory agency, such as the Department of Taxation or the Alcoholic Beverage Commission (ABC). (See Table 1.) A smaller percentage of States assign the responsibility to the State police, local police or local health departments.

The responsible agency does not always perform the inspections itself. Some responsible agencies delegate to or contract with other agencies to actually perform the inspections. In these States, agencies are delegating the inspection role to local agencies. (See Table 1.)

Table 1

Types of Agencies Responsible for
and Actually Conducting Inspections

	Responsible Agency	Inspecting Agency*
State Health	61 %	46 %
State Regulatory	22 %	22 %
State Law Enforcement	7 %	2 %
Local Health	4 %	8 %
Local Law Enforcement	4 %	13 %
Local Volunteer Group	0 %	4 %
Both State and Local Agencies Involved	2 %	4 %
Outside Contractor	0 %	2 %

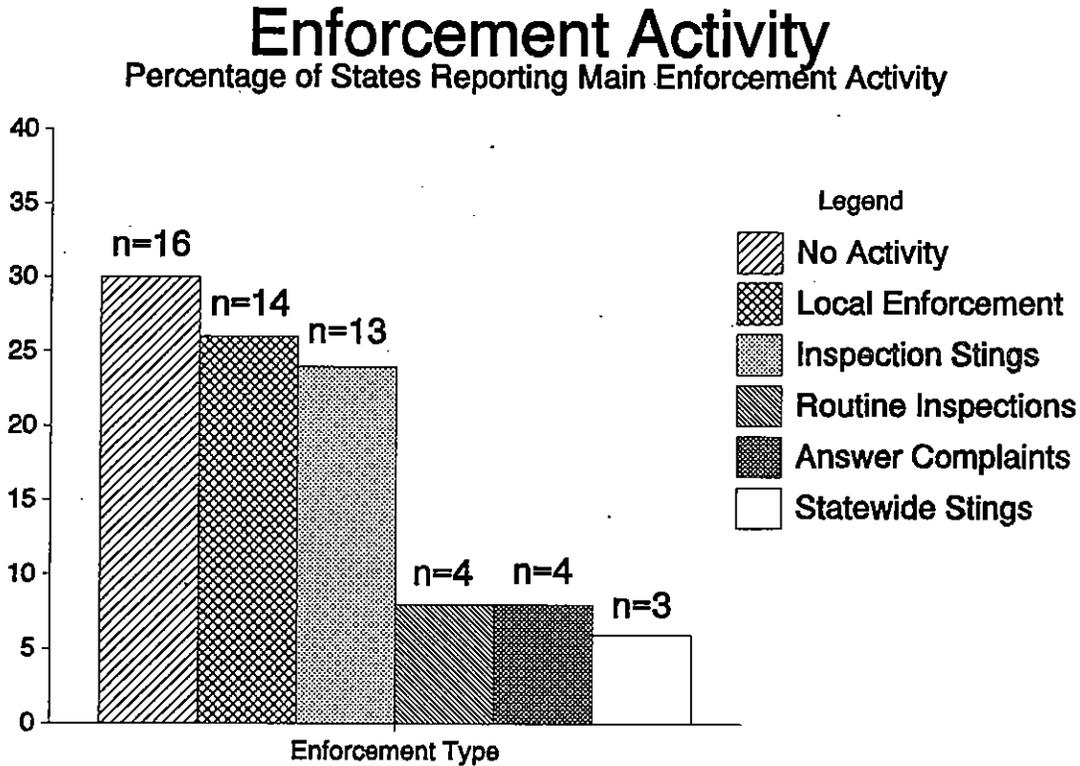
*Inspecting Agency column does not equal 100 percent due to rounding

A MAJORITY OF STATES DO NOT HAVE STATEWIDE ENFORCEMENT

Just over half (56 percent) of the States report no statewide enforcement activity. This includes the 30 percent of the States that report no enforcement activity at all and the 26 percent of the States that only have some localities within the State enforcing the law. (See Figure 2.)

Another 24 percent of the States report that their main enforcement activity consists solely of the random, unannounced inspections used to check compliance with their State tobacco law. While Section 1926 distinguishes between inspections to check effectiveness and those used to enforce, these States do not. Most of the States using their inspections process as enforcement penalize vendors found selling tobacco to minors. However, two such States report not penalizing vendors.

Figure 2



The remaining States use varying methods to enforce their law statewide. Only six percent of the States use stings as their main statewide enforcement activity. The stings performed in these States for enforcement are in addition to those performed for the unannounced inspection process. Other States respond to complaints of tobacco sales to minors (8 percent) and include tobacco sales as part of routine health or liquor inspections (8 percent).

State Regulatory Agencies and Local Law Enforcement Have Main Enforcement Roles

As with inspections, States have made a variety of agencies responsible for enforcement. Local law enforcement agencies have this role in 35 percent of the States. Aside from the local police, State regulatory and, to a lesser degree, State law enforcement agencies are frequently the responsible organizations. (See Table 2.) Often, law enforcement agencies are responsible since the State laws prohibiting tobacco sales and distribution to minors are criminal laws, rather than civil laws.

Table 2

Types of Agencies Responsible for
and Actually Enforcing the State Law

	Responsible Agency*	Enforcing Agency*
State Health	7 %	6 %
State Regulatory	26 %	24 %
State Law Enforcement	17 %	6 %
Local Health	4 %	8 %
Local Law Enforcement	35 %	46 %
Both State and Local Agencies Involved	8 %	8 %
Agency Not Determined Yet	4 %	4 %

*Columns do not equal 100 percent due to rounding

States' local law enforcement agencies are more likely to actually do the enforcement than be responsible for it. Forty-four percent of the States use local police, but only 35 percent of the States designate local police as the enforcers. (See Table 2.) In this situation, the State police responsible for enforcement are generally deferring to local police to actually do it.

STATES CITE OBSTACLES IN PERFORMING INSPECTIONS AND ENFORCEMENT

States report various problems with the inspection and enforcement provisions of Section 1926. States believe they have received little or no guidance from the Department of Health and Human Services, lack the sense of a priority to enforce their State laws, lack the necessary tools and authority and lack the resources to effectively meet the objectives of Section 1926.

Twenty-one percent report receiving no guidance and 36 percent report receiving minimal guidance from the Department. In contrast, 30 percent of the States feel the Department provides adequate guidance. The remaining States do not believe they need guidance or realize that the Department is not able to respond to their technical questions without the release of final regulations.

Thirty-five percent of the States believe the lack of priority given to State tobacco laws hinders enforcement. They report that the agency responsible for enforcement puts other

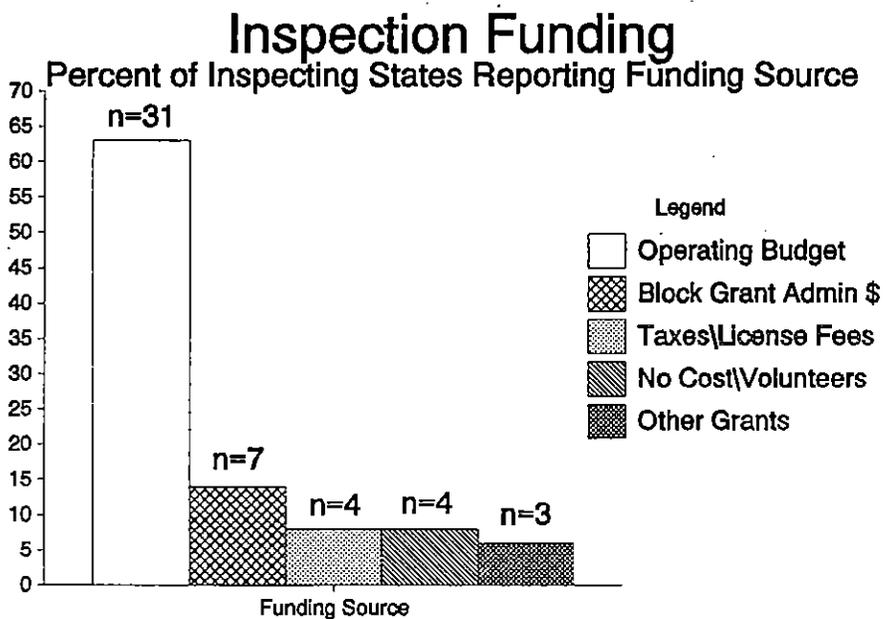
matters ahead of enforcing the State law. Generally, enforcement is the responsibility of local police who are more concerned with violent crime, theft and illegal drugs.

Another frequently cited obstacle is the lack of the necessary tools needed to perform inspections. Twenty-four percent of the States have difficulties conducting the inspections due to the lack of a central listing of vendors. Some States (20 percent) have legal or ethical problems in using youth in the inspection process. In some of these States it is illegal for minors to possess tobacco, so using them in consummated buys is an illegal action. Other States consider it inappropriate to include children in police-type activities.

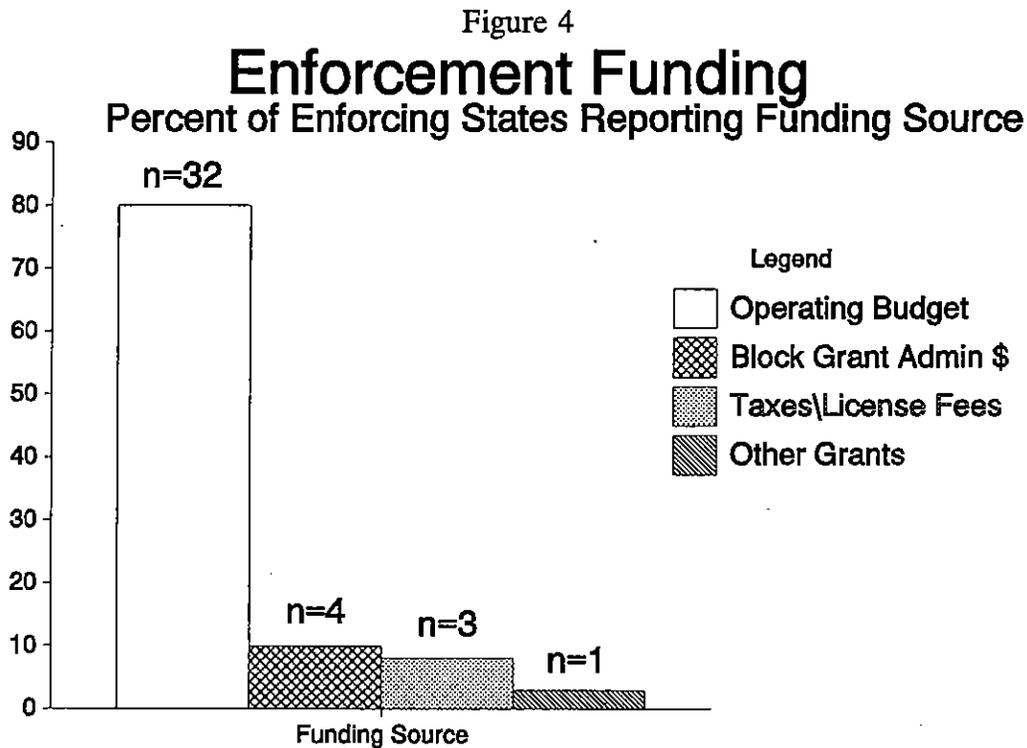
States also report a lack of resources as a problem. Thirty percent say they do not have enough money to perform the required inspections and 19 percent claim to have inadequate resources to enforce their State tobacco law. They stated that they cannot devote resources to the implementation of Section 1926 and still fund the same level of substance abuse treatment or law enforcement.

States have attempted to address this obstacle by using different sources for funding implementation. While a majority of States (63 percent) fund inspections through the operating budget of the agency doing the inspections, some have tried other sources for funds. These States use the administrative funds from the Substance Abuse Prevention and Treatment block grant, taxes, license fees, or other grant money to fund inspections. (See Figure 3.)

Figure 3



Of the States actively enforcing their State law, 80 percent fund it through the operating budget of the agency responsible. As with inspections, States find this a burden on already tight budgets. Ten percent of enforcing States are using the administrative dollars of the block grant. (The NPRM proposes not allowing Substance Abuse Prevention and Treatment block grant dollars to be used for enforcement.) The remaining States use taxes, licensing fees or other grants for funding. (See Figure 4.)



CONCLUSION

At this early stage in the implementation of Section 1926, the main area of progress has been in conducting inspections to measure the level of compliance with State laws. While most States have performed some inspections, the rate of enforcement has not changed greatly over the last few years. The previously mentioned OIG reports found that most States were not enforcing their laws limiting tobacco sales and distribution to minors.

The States have found the implementation process difficult. They are using different methods in attempting to implement section 1926 and overcome the obstacles that have arisen. The most frequently cited obstacle mentioned was the lack of guidance in implementation, particularly due to the lack of final regulations.

While the final regulations will greatly help the States, they need more than the regulations to successfully perform inspections and enforce their State law prohibiting tobacco sales and distribution to minors. The States will need technical assistance on how to meet the requirements spelled out in the regulations. The Public Health Service has prepared a technical assistance guide and conference for the States. The guide includes discussions on inspections techniques, potential sample frames and enforcement strategies, as well as an overview of Section 1926. It plans to provide this assistance upon the release of the final regulations.

AGENCY COMMENTS

We received comments from the Public Health Service. They agree that the report provides an informative look at States' efforts to comply with statutory requirements and prohibit the sale and distribution of tobacco to minors. The full text of their comments is provided in Appendix A.

APPENDIX A

AGENCY COMMENTS

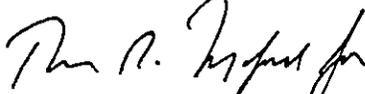


Memorandum

APR 20 1995

Date .
From Deputy Assistant Secretary for Health (Management and Budget)
Subject Office of Inspector General (OIG) Draft Report "State Oversight of Tobacco Sales to Minors," OEI-02-94-00270
To Inspector General, OS

Attached are the Public Health Service (PHS) comments on the subject OIG draft report. We believe that the report provides an informative look at the States' efforts to comply with Section 1926 of the PHS Act and prohibit the sale and distribution of tobacco to minors.


Anthony L. Ittekkag

Attachment

PUBLIC HEALTH SERVICE (PHS) COMMENTS ON THE OFFICE OF
INSPECTOR GENERAL (OIG) DRAFT REPORT "STATE OVERSIGHT
OF TOBACCO SALES TO MINORS," OEI-02-94-00270, FEBRUARY 1995

Under Section 1926 of the PHS Act, each State--as a condition of receiving a Substance Abuse Prevention and Treatment (SAPT) block grant--is required to have a law that prohibits the sale and distribution of tobacco products to persons under the age of 18. In addition, Section 1926 calls for States to enforce these laws; perform yearly, random, unannounced inspections; and submit annual reports to the Secretary which describe, among other things, their success in reducing such sales.

This OIG inspection describes the States' activities to monitor and enforce their laws prohibiting the sale and distribution of tobacco to minors. Since the report contains no specific recommendations, we offer the following general comments.

Overall, we found this report to be very informative and consistent with the knowledge that we have about implementation of Section 1926 of the PHS Act by the States. The report also presented a balanced view of the Federal efforts and constraints.

Some of the comments in the report reference the Notice of Proposed Rulemaking (NPRM) requirements and the level of State implementation. It should be noted that the NPRM was not in effect during the time of the OIG review. Although some States may have tried to meet the letter of the NPRM, most of them did not since they were awaiting the final rule. One such example in the OIG draft notes that a majority of the States do not use scientific sampling techniques to select the sample of vendors to be inspected. Section 1926 does not require a scientific sampling method; it merely requires that random, unannounced inspections be conducted and that States enforce the law in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to minors. The term "scientifically sound" appeared in the NPRM and the States were not held being accountable for this requirement in Fiscal Year (FY) 1994. To assist the States with sampling, the Centers for Disease Control and Prevention (CDC) is in the process of developing a sampling methodology.

The OIG draft also reports that the majority of States do not have statewide enforcement activities. Based on the Substance Abuse and Mental Health Services Administration's (SAMHSA) review of the SAPT block grant applications, and in conversations with State representatives, it appears that many States wish to begin the enforcement process by working with tobacco merchants in a spirit of cooperation. Therefore, for many States, the first step was not to identify violators but rather to educate the community of merchants on the State's

youth access law. We believe that education is an important precursor and there is evidence that law enforcement strategies are more effective if coupled with merchant education. In many cases this educational process was extended to youth and the community at large as well.

The OIG draft describes obstacles faced by the States in implementing Section 1926. Insufficient guidance and a lack of technical assistance from the Department were among the obstacles reported. During development of the final rule, SAMHSA found itself in an awkward position with regard to providing guidance. First, until a final rule is published, it is difficult to inform States on what the Department plans to require of States in enforcing their laws. Second, SAMHSA believed that it was important not to meet with outside individuals or groups because, given the controversial nature of the proposed regulations and the number of requests for such meetings, it would be impossible to meet with everyone to discuss the NPRM. SAMHSA was advised by the Office of the General Counsel that if they met with some groups to discuss the NPRM but not with others, it could create an appearance of unfairness which could compromise the rulemaking process. We believe that these circumstances should be clearly stated in the OIG report.

The OIG correctly reported that the absence of a final rule hindered the States. As noted above, with the regulatory process still underway, SAMHSA was unable to address specific questions and concerns. SAMHSA sought to provide a variety of broad suggestions rather than to respond with "how to" statements. However, in addition to responding to inquiries made by phone, the Center for Substance Abuse Prevention did discuss the overall requirements of Section 1926 with State Substance Abuse Directors at a variety of major conferences.

As noted in the report, SAMHSA has plans underway to provide the much-needed technical assistance upon publication of the regulation. These activities include a technical assistance workshop, which is to take place approximately 2 months after publication of the final rule. In addition, a guideline, being developed in conjunction with the Office on Smoking and Health, CDC, will provide clear direction on the requirements of the final regulation, discuss activities, and provide references. A technical appendix will be included for areas requiring a greater level of detail. At this point, however, due to the delay in issuing the final rule, SAMHSA and CDC have agreed to separate the CDC portions from the SAMHSA guidelines. This will permit CDC to proceed with their overall youth access campaign, of which a youth access guideline had originally been a part.

The OIG draft report indicates that four States, responsible for conducting random, unannounced inspections in FY 1994, did not do so. We cannot as yet confirm this statement since we have received fewer than half of the States' SAPT block grant FY 1995 applications which would provide us with the information on their inspections. However, SAMHSA's review of the applications thus far submitted, has found documentation from all States indicating that random, unannounced inspections were conducted. In some cases, the States did not carry out the inspections directly, but worked closely with coalitions and/or county and local groups who performed the inspections.

Technical Comments

Page 1, third sentence under CDC Research, we suggest that the sentence be restated as follows: "In Preventing Tobacco Use Among Young People: A Report of the Surgeon General, CDC reports that 13 studies...."

The OIG report uses the term "sting" when describing certain inspection activities. We suggest that it may be preferable to use the term "compliance check."