

Tobacco Settlement Revenue Oversight Committee

**POLICE
N.MEX.**

Presented by Sgt. Lee Mullen

New Mexico State Police / Special Investigations Unit

Welcome and Thank You For Joining Us!

**Please feel free to ask any questions that may arise as
we present the information!**

**We want you to leave with as much information as is
possible!**

History of The Special Investigations Unit

Created in 1987, Combining The Governor's Organized Crime Unit With The Enforcement Section of the State of New Mexico Regulation and Licensing Department.

Placed as a Division of the New Mexico Department of Public Safety and named the Special Investigations Division



History of The Special Investigations Unit

Primarily Tasked with investigation and enforcement of the New Mexico Liquor Control Act.

Agents were statutorily given the power to issue Administrative Citations to Licensed Alcohol Locations for violations in addition to charging of criminal violations.

Agents were/are certified and commissioned law enforcement officers

History of The Special Investigations Unit

In 1996, Federal Regulation tasked States with conducting annual unannounced inspections of Tobacco Retailers.

SID was given this task.

Criminal Citations were issued for violations, as the State of New Mexico did not require tobacco retailers at this time to be licensed by the State



History of The Special Investigations Unit



In 2015, SID was placed directly into the New Mexico State Police Investigations Bureau.

The Division was renamed as the Special Investigations Unit.

All Agents became sworn New Mexico State Police Officers

History of The Special Investigations Unit

In 2021, New Mexico legislators passed the **Tobacco Products Act (NMSA Chapter 61, Article 37)**.

A section of this legislation required all Tobacco sellers to be licensed by the State of New Mexico. SIU was then able to investigate violations of the Act, and issue Administrative Citations to the licensee.

Federal Requirements and Guidelines

In 1996, the Substance Abuse and Mental Health Services Administration (SAMHSA), issued a regulation providing guidance to States related to Synar implementation and enforcement.

The regulation required States to conduct annual, unannounced inspections of tobacco retailers that provide a probability sample of the accessibility of tobacco products to minors under the age of 18.

Federal Requirements and Guidelines

States that had a retail violation rate of more than 20 percent resulted in penalization of up to 40 percent of a State's Substance Use Prevention, Treatment, and Recovery Services (SUPTRS) Block Grant.

Enforcement began shortly after with NMDPS SID conducting consummated compliance operations

Current Duties and Tasks of SIU

NMSP SIU is tasked with and currently conducts two different forms of Enforcement.

NON-CONSUMATED COMPLIANCE CHECKS

CONSUMATED COMPLIANCE CHECKS

Current Duties and Tasks of SIU

NON-CONSUMATED COMPLIANCE CHECKS. Consisting of two minors, one male and one female both under the age of 21, both dressed age appropriate and pre-approved by NM HSD. Minors do not purchase product, rather they make the attempt to buy. If the clerk completes the transaction procedure and requests payment, the minors tell the clerk they forgot their money and return to the SIU vehicle. This is counted as a presumptive sale and this data is used as a blind survey for compliance rate

Current Duties and Tasks of SIU

CONSUMATED COMPLIANCE CHECKS. Consists of two minors, one male and one female both under the age of 21, both dressed age appropriate and pre-approved by NM HSD. Minors enter a location with funds provide by Agent conducting the operation and attempt to purchase cigarettes. If a purchase is made, Administrative Citations are issued to the licensed location. These citations are then forwarded to the Regulation and Licensing Department for adjudication

Current Duties and Tasks of SIU

During compliance operations minors participating in operations are paid \$15.00 an hour and are provided with one meal break for every 6 hours worked. They receive up to \$20.00 per meal. They are also paid for any time they are required to attend court or hearings.

Minors are recruited to participate in the compliance operations from a number of sources. They are often the child or other family member of a police officer, college students pursuing degrees which are related to health, criminal justice, or other related fields of study

Current Duties and Tasks of SIU

NMSP SIU conducts enforcement operations and handles received complaints that are not grant funded

Complaints are received from NM ABC, other departments, and citizen complaints

Police and Sheriffs Department are not currently allowed to issue administrative citations to licensed locations

Current locations not licensed are not subject to citations and are issued a cease-and-desist order

Procedures for Compliance Operations

A minimum of two SIU Agents and two minors work each operation
Minors are briefed prior to each operation commencement. It is stressed that the minor's safety is priority one, and if they feel uncomfortable or know someone at a location, they can self determine to not check that location. It will be checked at a later time
Minors are required to have a State of New Mexico Driver's License or ID Card. This must show their true age, and will have the date they turn 21 in red letters to eliminate clerks having to do math

Procedures for Compliance Operations

Minors enter each location in pairs, approach the tobacco sales area, and request to purchase some form of tobacco product
Usually, a SIU Agent will follow behind to observe
If asked for proof of age, the minors will present their true identification

If a sale is completed, the Minors will return to the vehicle, where they are secured while one or both Agents make contact with the clerk to take appropriate action

Statutes and Regulations used by SIU

15.8.7.8 COMPLAINTS AND INVESTIGATION

A. The division, the department of public safety, and the appropriate law enforcement authorities in each county and municipality may investigate any allegation of a violation and inspect licensed locations for compliance with the act and the rules promulgated thereof, and licensee's compliance during an inspection is required.

B. Whenever probable cause exists that a licensee has violated a provision of the act or these rules, a citation may be issued to the licensee for such violation and a copy of the citation shall be filed in the division.

Statutes and Regulations used by SIU

15.8.5.10 SALES TO MINORS:

A. It is a violation of the act for a licensee or their employee to knowingly, intentionally, or negligently sell, offer to sell, barter, or give a tobacco product to a person under 21 years of age. B. Use of third-party age verification service may be evidence of mitigating factors.

15.8.5.11 FAILURE TO VERIFY AGE:

It is a violation of the act for a retailer or an employee of a retailer to knowingly, intentionally, or negligently fail to verify the age of before selling, or providing, tobacco products to the consumer.

Statutes and Regulations used by SIU

15.8.5.12 MINORS IN AGE-CONTROLLED LOCATIONS:

It is a violation of the act for licensee to allow persons under the age of 21 into age-controlled locations where tobacco products vending machines and the sales and display of cigars are present.

61-37-3. Prohibited sales; manufacturing; labeling; marketing; safety requirements
A person shall not knowingly, intentionally or negligently sell, offer to sell, barter or give a tobacco product to a minor.

Current Challenges to SIU

NMSP SIU has received lower funding amounts to complete grant required goals. The amounts have gradually decreased to what is now the lowest level in the history of the grant. NMSP SIU Agents have received several pay raises in the last few years and grant funding has not adjusted for monetary wage increases. We have less hours to complete the same amount of operations because higher wages means higher cost per operation

Current Challenges to SIU

NMSP SIU receives shorter time allocations to complete required Enforcement Operations. It must be noted, that the Tobacco Enforcement section of SIU duties, is only a small part of the duties Agents are tasked with and required to perform. Shorter time allocations are also affected by the availability of minors to perform these enforcement checks

Current Challenges to SIU

NMSP SIU has to have a minimum of 2 Agents plus a male and female minor for enforcement operations. and recruiting minors is a challenge. Availability of these minors is limited by the time constraints, school and work schedules of the minors, and the competition of other employment opportunities of the minors. Most employers pay the same or more per hour, and they offer a stable schedule

Current Challenges to SIU

NMSP SIU receives no mileage allowance and most operations in rural areas require multiple hours and miles of travel. NMSP absorbs the costs of fuel, maintenance, and increased mileage on fleet vehicles. Increased mileage causes shorter life of vehicles which are used for other enforcement duties

Current Challenges to SIU

NMSP SIU has current manpower issues. SIU is currently given nineteen (19) Agent positions around the state. SIU has seven (7) Agent vacancies around the state. Historically SIU has had twice this number. There are five Sergeants, one Lieutenant, one Captain and one Administrative Assistant. Since combined with NMSP some tool numbers (positions) are repurposed to other bureaus and not returned.

Future Challenges to SIU

Cannabis legalization has increased the number of complaints coming to SIU. Cannabis Control Division does not have the manpower to conduct inspections. They have requested our assistance on numerous complaints. One SIU agent in Albuquerque is currently only assisting with cannabis complaints. What happens when Cannabis Regulation becomes a duty placed on NMSP?

In Closing

NMDPS SID / NMSP SIU Has participated in and has been the lead Agency for SYNAR compliance, tobacco products enforcement and calls for service complaints

The procedures and methods used by NMSP SIU are often cited by Federal Government Entities, as the model for other States to follow. NMSP SIU is by far the most recognized authority on these types of enforcement, and education to licensees within New Mexico and often by other States

In Closing

NMSP SIU has worked with the NM Department of Health and NM Human services department striving to complete all grant requirements. NM Has been a leader in decreasing tobacco sales and use by minors. As a state we have never fallen under the 80% compliance rate and with continued inter Agency cooperation we should remain as one of the leading states for Meeting Synar requirements

NMSP SIU is often called upon by County and Municipal Agencies to assist in the alleviation and mediation of tobacco related problems within their jurisdictions. NMSP SIU works in conjunction with these Agencies using enforcement, training, and presentations to government and citizen groups

Questions or Comments

It has been the honor of the Special Investigations Unit to present this information to you today!

Please feel free to ask any questions or make comments!

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New Mexico State Police Special Investigations Unit

6301 Indian School Road N.E. Suite 310

Albuquerque, New Mexico 87110

Office: (505) 841-2238

Captain Patrick Bucksath – Commander

Patrick.bucksath@dps.nm.gov

Sgt. Lee Mullen – Zone Supervisor

Lee.mullen@dps.nm.gov