



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
Ashwin Vasan, MD, PhD
Commissioner

Tobacco Product Regulation Act 2020 Annual Report

This report is respectfully submitted pursuant to section 17-711 of the New York City Administrative Code which requires an annual report to the City Council and the Mayor of New York regarding the administration and enforcement of the Tobacco Product and Regulation Act.

Introduction

The Tobacco Product Regulation Act (TPRA), New York City Administrative Code §17-701 *et seq.*, became effective in April 1993, and was last amended in 2020. Provisions of this law forbid the sale of cigarettes, tobacco products, e-cigarettes, or non-tobacco smoking products to persons under the age of 21, the sale of unpackaged cigarettes ("loosies"), and the sale of tobacco products by anyone under the age of 18, unless that person is under the direct supervision of another employee who is of age and on the premises. Beginning in 2014, retailers were required to post specifically worded signs indicating that tobacco and e-cigarette sales to those under the age of 21 are prohibited and must also request and review photo identification from the prospective buyer, unless the purchaser reasonably appears to be at least 30 years of age. The responsibility for educating retailers about TPRA and the enforcement of TPRA lies with the Department of Health and Mental Hygiene (DOHMH), the Department of Consumer and Worker Protection (DCWP), and the Department of Finance (DOF).

The Adolescent Tobacco Use Prevention Act (ATUPA), New York State Public Health Law §1399-aa *et seq.*, similarly prohibits the sale of tobacco products to youth, though on a statewide basis. In 2019, ATUPA was amended to increase the minimum legal sale age from 18 to 21. ATUPA provides authority for the State Department of Health (SDOH) to fund local government entities to enforce ATUPA in their jurisdictions. Pursuant to this authority, State Department of Health (SDOH) funds DCWP to perform ATUPA compliance checks and funds DOHMH to educate tobacco retailers about the provisions of ATUPA, TPRA and the consequences of noncompliance.

To enforce the provisions of both the TPRA and ATUPA, DCWP employs underage youth to make undercover attempts of over-the-counter purchases of tobacco, non-tobacco smoking products and e-cigarettes during compliance checks. However, compliance checks were suspended due to the pandemic. DCWP compliance checks include annual inspections of all retailers and follow-up inspections with retailers that have received "points" for past violations. (See below for more information about points). There are currently 5,520 licensed tobacco retail dealers and 2,589 licensed



electronic retail cigarette dealers in New York City.

Penalties for violation of the TPRA are specified in New York City Administrative Code §17-710. Fines range from \$500 to \$5,000. In some cases, the amounts of fines escalate for repeat offenders so long as the violations take place within a three-year period. Repeated violations within a three-year period, also can trigger revocation of the vendor's City Tobacco Retail Dealer license. Office of Administrative Trials and hearings (OATH) adjudicates these violations. Penalties for violations of ATUPA are specified by state law. Fines range from \$300 to \$2,500. In addition, the statute sets forth a process by which sale-to-minor violations result in "points" on a retailer's record. The accumulation of three or more points can result in suspension or revocation of a retailer's state tobacco registration and state lottery license.

Results

DCWP discontinued compliance checks with youth in March 2020 to reduce the risk of COVID-19 transmission during the global pandemic. DCWP inspectors were reassigned to the enforcement of regulations prohibiting price gouging on household goods used to prevent or treat the new coronavirus (COVID-19). The agency restarted adult tobacco inspections in July of 2020. However, most tobacco inspectors were reassigned in October of 2020 to educate businesses on the New York State guidelines for operating safely during the pandemic.

The following table reflects the tobacco inspection activity during Grant Year XXII, April 1, 2020, to March 31, 2021.

Quarter	Compliance checks by adults	Compliance checks with youth (paused)	Tobacco sales made to youth
1st Quarter Grant XXI Apr. 1-June 30, 2020	0	0	0
2nd Quarter Grant XXI July 1-Sept. 30, 2020	826	0	0
3rd Quarter Grant XXI Oct. 1-Dec. 31, 2020	287	0	0
4th Quarter Grant XXI Jan. 1, 2021-March 31,	817	0	0



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2021			
Total	1930	0	0

Discussion

DCWP did not complete any compliance checks with youth during Grant Year XXII. New York State Department of Health authorized DCWP to reallocate inspection resources from tobacco enforcement to other activities promoting public health pursuant to the program workplan. Despite this reallocation, DCWP continued to conduct compliance inspections with adults. A total of 1930 compliance checks were performed between July 2020 and March 2021.

Between April 1st, 2020, to March 31st, 2021, DOHMH provided education to retailers licensed to sell tobacco or electronic cigarette products in NYC. With permission from New York State Department of Health, educational visits were not performed this grant year due to the COVID-19 pandemic, however other educational activities were performed. A total of 5,191 unique owners of tobacco and/or electronic cigarette retailers in NYC were mailed a toolkit of educational materials on the NYC and NYS laws governing the sale of tobacco and related products, including newly passed restrictions. The toolkit contained a cover letter, handouts on the relevant NYS and NYC laws, penalties, tobacco retailer certification programs, as well signs and a consumer-facing poster. DOHMH Representatives also worked with retailer associations (Yemeni American Merchants Association, United Bodegas of America, Bodega Association) and other stakeholders (Economic Development Corporation, Small Business Services, etc.) to perform webinars and share information about materials with retailers. Materials were made available to retailers in English, Spanish, Chinese (simplified and traditional), Korean, Hindi, Bengali and Arabic through the DOHMH website.

DCWP's Visiting Inspector Program (VIP) also provides free consultations to newly licensed businesses on the laws and rules enforced by DCWP. DCWP discontinued VIP education between March 2020 and July 2020. Between July 2020 and March 2021, VIP inspectors provided business education to 19 newly licensed tobacco retail dealers.

DCWP also conducted 107 outreach events, citywide, targeting brick and mortar businesses and shared information from our Tobacco Retail Dealer and Electronic Cigarette Retail Dealer inspection checklists, as well as additional resources made available by the agency.