



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

Tobacco Product Regulation Act 2021 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 5,117 licensed tobacco retail dealers and 2,342 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 can also trigger revocation of the vendor's City Tobacco Retail Dealer license. The Office of Administrative Trials and hearings (OATH) adjudicates these violations. Penalties for violations of ATUPA are specified by state law. Fines range from \$100 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

Between March of 2020 and June of 2021, DCWP inspectors conducted tobacco compliance inspections alone, without a tobacco program intern to conduct an underage purchase attempt. DCWP began onboarding and training new underage tobacco program interns in June of 2021. As a result, the number of youth purchase attempts increased significantly between the first and fourth quarters of the grant year. Although tobacco inspections remained a priority throughout the year, a number of tobacco inspectors were reassigned to inspect restaurants and gyms for compliance with "Key to NYC" vaccine mandate requirements in the 3rd quarter. This reassignment to other health priorities affected DCWP's ability to complete inspections in the second half of the grant year. In total DCWP completed approximately 4,500 youth compliance checks, and of those businesses approximately 1,193 were found in violation.

The following table reflects the tobacco inspection activity during Grant Year XXIII, April 1, 2021, to March 31, 2022.

Quarter	Total Compliance checks	Compliance checks with youth	Tobacco sales made to youth
1st Quarter Grant XXIII Apr. 1-June 30, 2021	1,590	156	43
2nd Quarter Grant XXIII July 1-Sept. 30, 2021	3,398	1,273	332



3rd Quarter Grant XXIII Oct. 1-Dec. 31, 2021	2,027	1,154	306
4th Quarter Grant XXIII Jan. 1, 2022-March 31, 2022	2,584	1,930	516
Total	9,599	4,513	1,193

Discussion

A total of 9,599 compliance checks were performed between April 2020 and March 2021. Of these, 4,513 compliance checks were carried out by youth.

Between April 1, 2021, to March 31, 2022, 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. DOHMH mailed a toolkit of materials to 5,110 unique owners of tobacco and/or electronic cigarette retailers in NYC. The toolkit of educational materials included information on the NYC and NYS laws governing the sale of tobacco and related products. 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. Additionally, letters were mailed to 974 unique owners of tobacco and/or electronic cigarette retailers in NYC who had received a violation for selling to an underage person or for selling a flavored tobacco or e-cigarette product (between January 2020 and May 2021). The letter included information about how to better comply with underage and flavor laws.

DOHMH Representatives also worked with retailer associations (Yemeni American Merchants Association, United Bodegas of America, Bodega Association) and other stakeholders (e.g. Business Improvement Districts, Economic Development Corporation, Small Business Services, DOHMH Shop Healthy Program, and NYS Attorney General’s Office) to perform webinars and share information about materials. Digital copies of the 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. Between July 2021 and March 2022, VIP inspectors provided business education to 368 newly licensed tobacco retail dealers.

DCWP also conducted 112 outreach events, citywide, targeting brick and mortar



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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.